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S. 65, THE HAWAIIAN HOMEOWNERSHIP ACT OF 2011

FIELD HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

APRIL 13, 2012

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S. 65, THE HAWAIIAN HOMEOWNERSHIP ACT OF 2011

FRIDAY, APRIL 13, 2012

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Honolulu, Oahu, HI.

The Committee met, pursuant to notice, at 10:05 a.m. in the Oahu Veterans Center, Hon. Daniel K. Akaka, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. DANIEL K. AKAKA, U.S. SENATOR FROM HAWAII

The CHAIRMAN. I call this hearing of the Committee of Indian Affairs to order.

Aloha mai, aloha mai kakou and mahalo for being here with us today.

AUDIENCE. Aloha.

The CHAIRMAN. It is so wonderful to be home and to be holding this legislative hearing on the U.S. Senate Bill 65, the Hawaiian Homeownership Opportunity Act of 2011. I know this measure is so important to advancing Prince Kuhio's vision of returning our people to the aina. And we must endeavor to meet the standard he set for us.

As I mentioned earlier, this bill is crafted and sponsored by my good friend and partner, our great senior Senator Dan Inouye. Senator Inouye and I are pleased that you could join us today.

Its companion bill in the house is sponsored by Congresswoman Mazie Hirono and co-sponsored by Congresswoman Colleen Hanabusa, and Congressman Don Young of Alaska.

I'm happy to have invited the congresswomen to join the Committee on the dais for this hearing and to participate as their schedules permit. I know she's busy and—well, all of our members are busy—and I want to say, Congresswoman Hirono, much aloha. We are expecting Congresswoman Hanabusa shortly.

I want to extend a warm aloha to our guests from Washington, DC and welcome HUD's Deputy Assistant Secretary for Native American programs, remember that name, Rodger Boyd, to Hawaii.

Thank you for taking this time all of you for traveling here so far to talk with us and hear from the community about the importance of HUD housing programs for Native Hawaiians. I hope you were able to see some of the projects of HUD, Mr. Boyd, and what you've been supporting here in Hawaii.

The United States has a trust relationship with Native Hawaiians as indigenous people of these islands of the State of Hawaii, and what is now the United States. Congress has understood this relationship for a long time, and began legislating to meet its trust responsibility—can you imagine—over 90 years ago. With passage of the Hawaiian Homes Commission Act of 1920, Congress set aside 203,500 acres of land to ensure that the Native Hawaiian people had home lands where our ways and our communities could continue to thrive.

Along the way, and in furtherance of the trust responsibility, Congress has enacted over 150 laws to protect Native Hawaiian rights, address Native Hawaiian concerns and provide resources to meet Hawaiian needs.

In 1959 the Hawaii Admissions Act, the United States required the State of Hawaii to administer certain portions of federal trust responsibility, and the state incorporated that responsibility into its own constitution and body of law.

As part of that federal trust responsibility, today's hearing considers a bill to reauthorize HUD programs that provide housing assistance to Native Hawaiians, ensuring that Native Hawaiian people have access to housing programs on our trust lands consistent, consistent, with that and what the United States provides to other federally recognized Native peoples.

The Hawaiian Homeownership Opportunity Act is an important part of meeting the housing needs of no income Native Hawaiians, and achieving the original goal of the Hawaiian Homes Commission Act of 1920.

Senator Inouye, now I would like to ask you to make any opening statement you may.

STATEMENT OF HON. DANIEL K. INOUYE,
U.S. SENATOR FROM HAWAII

Senator INOUYE. Thank you. I thank you very much, Mr. Chairman, for holding this hearing on Senate Bill 65.

Over the past four years American families have struggled through what some have called the great recession, and for the first time in a long while, American's middle class is experiencing housing problems. They have fallen behind in their loan payments. The value of their homes have dropped, and they can't sell it to recoup their investment. And some are losing their homes on foreclosures.

The impact on Native communities have been many, many times worse. There were serious housing challenges experienced when the economy was good. According to the 2003 report published by the United States Commission on Civil Rights, approximately 98,000 Native families are homeless or under-housed. And I'm certain that this number has only increased in the last decade.

Poverty has run rampant in Native communities. Affordable and safe housing is difficult to obtain. As a result, Native families regularly face overcrowded and substandard living conditions.

And here in Hawaii, studies have documented the acute housing needs of Native Hawaiians, which include the highest rates of overcrowding and homelessness in the State of Hawaii.

Those same studies indicate that Native Hawaiians have the highest inadequate housing rates in the nation. And this should not be surprising because when you consider the cost of housing and the lack of affordable housing in this state, well, Hawaii's housing market has not yet fully recovered. The median sales price for single-family home on Oahu this past January—listen to this—was $618,000. And how many young families can afford this, or for that matter, old families?

And so I introduce S. 65, the Hawaiian Homeownership Act, because I believe this program is essential to provide affordable housing for the beneficiaries of the Hawaiian Home Lands trust. This bill amends the Native American Housing Assistance and Self-Determination Act and the Housing Committee Development Act of 1992 to extend housing assistance and loan guarantees for Native Hawaiian housing through fiscal year 2015.

This bill also makes the Department of Hawaiian Home Lands eligible for loan guarantees. These changes will provide Native Hawaiians with program benefits similar to those available to American Indians and Alaska Natives.

United States has consistently demonstrated, as the Chairman has indicated, that clear trust relationship and responsibility of Native Hawaiians through scores and scores of studies and statutes over these decades. It is through that trust relationship that our nation has provided housing services to Native Hawaiians.

Despite the Congress' clear historical recognition of this trust relationship, I must sadly tell you that there are some members who oppose Native Hawaiian programs and funding. It is my hope that through the testimony today, the hearing record will reinforce the historical and legal justification for Native Hawaiian programs, like housing, to benefit our state's condition.

And so I thank you, Mr. Chairman, for your leadership in holding these hearings today. Unfortunately, I have a flight to catch, Mr. Chairman, so I'll be here to listen to the first panel, and if I may, sir, I would like to submit questions that can be submitted to the witnesses. Thank you very much, sir.

The CHAIRMAN. Thank you very much, Senator Inouye. Your full statement will be placed in the record, and we are delighted to have had you here for the time you can spend with us.

And, again, I just repeat, this is his bill, co-sponsored by our delegation, and we'll continue to work on it. Thank you, again, Senator, for your opening statement.

Congresswoman Hirono, we'll hear you during the first panel, and from Congresswoman Hanabusa in the second panel. We will also hear from HUD and DHHL as the principal agencies tasked with carrying out this part of the trust responsibility to the Native Hawaiian people, from legal and state law experts who can help us review how the federal trust responsibility has been advanced by Congress, and the State of Hawaii, and from the community and the organizations partnering with them to deliver needed services and opportunities.

As Chairman, it is my goal to ensure that we hear from all who want to contribute to the discussion. The hearing record will be open for two weeks from today, and I encourage everyone to submit your comments through written testimony. I know we are on Ha-

waiian time, but I encourage the witnesses to limit your oral testimony to five minutes, if you can, and so we can engage in a discussion afterwards as well.

Serving on our first panel is Honorable Mazie Hirono, Congresswoman from Hawaii's Second District. And I would like to ask Mr. Rodger Boyd to please step forward also, Deputy Assistant Secretary for Native American programs at U.S. Department of Housing and Urban Development in Washington, DC.

Michelle Kauhane, Deputy Director, State of Hawaii, Hawaiian Home Lands in Kapolei, Hawaii. Welcome to our panel.

Congresswoman Hirono, will you please begin.

STATEMENT OF HON. MAZIE K. HIRONO, U.S. REPRESENTATIVE FROM HAWAII

Ms. HIRONO. Thank you very much, Mr. Chairman. Good morning everyone.

Senator Akaka, thank you so much for calling today's hearing, and, of course, Senator Inouye. Both of you have been leaders and champions in advancing the interests of Native Hawaiians, and it's certainly an honor to testify this morning.

I am a strong supporter of S. 65, the Hawaiian Homeownership Act of 2011, which was introduced by our Senator Inouye, and I have introduced similar legislation in the House of Representatives, H.R. 2648, the Hawaiian Homeownership Opportunity Act, along with Congresswoman Hanabusa and Alaska Representative Don Young.

My friend from Alaska, Don Young and I have partnered a number of times in the House to save and support Native Hawaiian and Alaska Native programs.

Passage of S. 65 and H.R. 2648 would build up Congress' long and bipartisan history of supporting Native Hawaiian housing issues.

Both of you have eloquently explained how important this is and how great the need is. This history of support spans nearly a century, and began with the passage of the Hawaiian Homes Commission Act which was passed in 1921 at the urging of Hawaii's Delegate to Congress, Prince Jonah Kuhio Kalanaiana'ole. That legislation set aside some 204,000 acres of land to provide homesteads for Native Hawaiians.

With the enactment of the Statehood Act of 1959, the control and administration of the Hawaiian Homes Commission Act was transferred from the Federal Government to the late new State of Hawaii. And later in 1960 the Department of Hawaiian Home Lands, DHHL, was created to administer the Hawaiian Homes Commission Act.

Then in 2000 Congress passed the American Homeownership and Economic Opportunity Act. This legislature established two programs to help provide housing to Native Hawaiians. The Native Hawaiian Housing Block Grant Program and the Section 184A Loan Guarantee Program.

To date, DHHL and community groups around the state have helped provide housing, counseling and financial literacy training to thousands of Native Hawaiians.

Both of these programs have a real impact on the Native Hawaiian community. The Hawaiian Homes Commission and the dedicated staff at DHHL have both worked hard to make sure that the resources provided have been well used. And it is our solid charge as Hawaiian representatives to make sure that the U.S. Congress understands and fulfills its obligations to Native Hawaiians. And we always work together to fulfill this important responsibility and duty.

As Senator Inouye mentioned, unfortunately there are those in Washington who view these programs as set-asides based on race or arbitrary expenditures to the federal budget. They reject the notion that we have a special responsibility to the indigenous people of our nation. And in recent years I have fought on the floor of the House of Representatives against these notions. Fortunately we have been successful.

These programs aren't handouts. And there's certainly more than simply numbers in the federal budget. These programs are about giving families—families that have some of the greatest needs of all in Hawaii's population—the opportunity for homeownership. Owning a home has long been a pillar of the American dream, and it is a dream that people do not forget and do not give up on, and that is why passage of S. 65 is so important.

This bill would reauthorize the Native Hawaiians Housing Block Grant program, as well as the Section 184A program through fiscal year 2015. It would also set in statute the ability for DHHL to refinance mortgages under the 184A program, and this authority currently exists only as provided for in the annual appropriations law.

So it's very important that we put this authority in statute to ensure the necessary flexibility for the program as well as certainty for those considering refinancing as an option.

Finally S. 65 would make DHHL eligible for Title VI loan guarantee program under the Native American Housing Assisting and Self-Determination Act. This program currently allows Indian Housing Block Grant recipients to pledge future grant funds as security in order to receive a private loan guaranteed by HUD to finance affordable housing projects. This could prove to be a useful tool for financing affordable housing projects in the future.

And I do commend the DHHL for being very resourceful and just gathering the tools that we need to enable more Native Hawaiian families in pursuing and obtaining the American dream of homeownership.

So I strongly support the passage of S. 65 and will continue working with the members of our delegation to see this measure advanced. At the same time we need to make sure that the programs currently authorized under these programs, under the existing laws, continue in the meantime.

So, again, I appreciate this opportunity to put my strong support for S. 65 on the record, and I do apologize, senators and to the panel members, for my inability to stay for the remainder of the panels. But please know everyone that I completely am on the same page with all of you in supporting this bill. Mahalo nui loa.

[The prepared statement Ms. Hirono follows:]

PREPARED STATEMENT OF HON. MAZIE K. HIRONO, U.S. REPRESENTATIVE FROM HAWAII

Aloha kakahiaka käkou (Good morning everyone). Thank you, Chairman Akaka, for calling today's hearing. You have been such a leader and champion in advancing the interests of the Native Hawaiian community. It is an honor to testify this morning.

I am a strong supporter of S. 65, the Hawaiian Homeownership Act of 2011, which was introduced by Senator Inouye. I have introduced similar legislation in the House of Representatives—H.R. 2648 the Hawaiian Homeownership Opportunity Act—along with Congresswoman Hanabusa and Alaska Representative Don Young.

Passage of S. 65 and H.R. 2648 would build on Congress's long and bipartisan history of supporting Native Hawaiian housing issues. This history spans nearly a century and began with the passage of the Hawaiian Homes Commission Act. Congress passed this Act in 1921 at the urging of Hawaii's Delegate to Congress, Prince Jonah Kuhio Kalaniana'ole. That legislation set aside some 204,000 acres of land to provide homesteads for Native Hawaiians.

With the enactment of the Statehood Act of 1959, the control and administration of the Hawaiian Homes Commission Act was transferred from the federal government to the new State of Hawaii. A year later in 1960, the Department of Hawaiian Home Lands (DHHL) was created to administer the Hawaiian Homes Commission Act.

Then in 2000, Congress passed the American Homeownership and Economic Opportunity Act. This legislation established two programs to help provide housing to Native Hawaiians: The Native Hawaiian Housing Block Grant Program and the Section 184A loan guarantee program. To date, DHHL and community groups around the state have helped provide housing, counseling, and financial literacy training to thousands of Native Hawaiians.

Both of these programs have a real impact on the Native Hawaiian community. The Hawaiian Homes Commission and dedicated staff at DHHL have both worked hard to make sure that the resources provided have been well used. It is our solemn charge as Hawaii's representatives to make sure that the U.S. Congress understands and fulfills its obligations to Native Hawaiians, and we work together to see to this important duty.

Unfortunately there are those in Washington who view these programs as set asides based on race, or arbitrary expenditures on the federal budget. They reject the notion that we have a special responsibility to the indigenous people of our nation. In recent years I've fought on the floor of the House of Representatives against these notions—and fortunately we've been successful. These programs aren't handouts and they are certainly more than simply numbers in the federal budget. These programs are about giving families—families that have some of the greatest needs in all of Hawaii's population-the opportunity for homeownership.

Owning a home has long been a pillar of the American dream. This is a dream that people do not forget, and do not give up on. There many stories of Native Hawaiians who have been on waiting lists for decades. Some have died waiting to see this dream fulfilled. So it is clear that we have much more work to do. And that is why passage of S. 65 is so important.

S. 65 would reauthorize the Native Hawaiian Housing Block Grant program as well as the Section 184A program through Fiscal Year 2015. It would also set in statute the ability for DHHL to refinance mortgages under the 184A program. This authority currently exists under authority provided in annual appropriations law. However, setting this ability in statute would ensure necessary flexibility for the program as well as certainty for those considering refinancing as an option.

Finally, S. 65 would make DHHL eligible for Title VI loan guarantee program under the Native American Housing Assistance and Self-Determination Act. This program currently allows Indian Housing Block Grant recipients to pledge future grant funds as security in order to receive a private loan guaranteed by HUD to finance affordable housing projects. This could prove to be a useful tool for financing affordable housing projects in the future.

I strongly support the passage of S. 65 and will continue working with the members of the delegation to see this measure advanced. We will also continue to work together to see that the important programs that S. 65 would reauthorize receive the federal support they need in the meantime.

Again, I appreciate the opportunity to testify in support of this important legislation. Mahalo nui loa (Thank you very much).

The CHAIRMAN. Mahalo and thank you, Congresswoman Hirono, for your testimony.

And now we will receive the testimony from Mr. Boyd. Would you please proceed.

STATEMENT OF RODGER J. BOYD, DEPUTY ASSISTANT SECRETARY, NATIVE AMERICAN PROGRAMS, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Mr. BOYD. Thank you, Mr. Chairman, and good morning.

Mr. Chairman and Members of the Committee, it is a pleasure to appear before you this morning and of course to be back in Hawaii. My name is Rodger Boyd, and I am the Deputy Assistant Secretary for Office of Native American programs at HUD.

On behalf of Secretary Shaun Donovan and Assistant Secretary Sandra Henriquez, I would like to express my deep appreciation for your ongoing commitment to improving housing conditions for Native Americans and Native Hawaiians.

On a personal side, being a member of the Navajo Tribe, it's a great pleasure to have received your assistance over the very many, many years since I've been working on behalf of my Tribe and for Native Americans throughout the country.

I'd also like to thank you for allowing HUD to provide comments on this S. 65 Hawaiian Homeownership Act of 2011. We have submitted written testimony to the Committee that does have greater details to my comments this morning.

Chairman Akaka and Senator Inouye, as you know, HUD's Office of Native American programs is responsible for the management, operation and oversight of HUD's Native American and Native housing programs. The Native Hawaiian Housing Program my office administers is through the Native Hawaiian Housing Block Grant and the Native Hawaiian Section 12 184A Loan Guarantee Program.

These programs contribute significantly to the development of housing and homeownership on Hawaiian home lands.

I'm here today to testify that the Office of Native American Programs, and HUD, fully support the Hawaiian Homeownership Act of 2011, S. 65, and its expansion and reauthorization of both these programs through fiscal year 2015.

HUD has seen that the Department of Hawaiian Home Lands, which is the sole grantee of the Native Hawaiian Housing Block Grant, works effectively with its community partners to not only increase housing opportunities throughout the state, but to build stronger, more economically vibrant and self-sufficient communities. DHHL's leaders understand the value of thoughtful planning that is evidenced in their annual strategic housing plans, which include elements of regional planning, energy efficiency and resource leveraging. DHHL has indicated that a reliable, steady stream of federal grant funding is essential to project and plan for long-term growth and development.

To address critical housing issues such as affordability, overcrowding, structural quality, and availability, DHHL has targeted a significant amount of block grant funds to support site improvements and infrastructure development; financial assistance for home buyers; rehabilitation of existing units; homeownership counseling; and technical assistance to prepare families for home purchase and ownership.

The first Block Grant was awarded first in Hawaii 2002 for $9.6 million. Over the last ten years the Block Grant investments has totaled $108 million, including Recovery Act funding.

A key provision of S. 65 would create a Title VI program using Block Grant funds, which would greatly expand DHHL's ability to leverage federal and private funds. Title VI could be a powerful addition to the development tool for DHHL.

On the mainland, Title VI has financed dozens of successful projects in Indian Country, and has provided an incentive for lenders, which I think is extremely important to get involved in the development of Tribal housing.

The Section 184A Loan Guarantee Program provides access to private-market mortgage financing for Native Hawaiian families who might not otherwise be able to get a mortgage loan because of the trust status on Hawaiian home lands.

S. 65 would expand the 184A program to allow families for the first time to refinance their home mortgages at the current low market rates. This would help Native Hawaiian families save more money, giving greater stability to communities where housing costs are among the highest in the nation, which was well pointed out.

Under the fiscal year 2012 the Appropriations Act authorized Section 184A refinancing, but only for fiscal year 2012. HUD strongly supports making refinancing provision permanent, as this bill will so allow.

With the recent authority to refinance in fiscal year 2012, DHHL's success in constructing new homes, we expect loan activity to significantly increase, and certainly a permanent provision would be value added.

In conclusion, Mr. Chairman, HUD supports S. 65 and the reauthorization of both the Native Hawaiian Housing Block Grant and the Section 184A Loan Guarantee Program. Through these programs, HUD can continue to partner with DHHL in providing Native Hawaiian families with fair and affordable housing opportunities.

Thank you again for the opportunity to appear before you today. And I will be happy to answer any questions you may have, thank you.

[The prepared statement of Mr. Boyd follows:]

PREPARED STATEMENT OF RODGER J. BOYD, DEPUTY ASSISTANT SECRETARY, NATIVE AMERICAN PROGRAMS, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Mr. Chairman and Members of the Committee, it is a pleasure to appear before you this morning. My name is Rodger Boyd, and I am the Deputy Assistant Secretary for the Office of Native American Programs (ONAP) at the Department of Housing and Urban Development.

On behalf of Secretary Donovan and Assistant Secretary Henriquez, I would like to express my deep appreciation for your ongoing commitment to improving housing conditions for Native Hawaiian peoples. I also want to thank you for allowing HUD to provide comments on Senate Bill 65, the Hawaiian Homeownership Act of 2011.

Chairman Akaka, as you know, HUD's Office of Native American Programs is responsible for the management, operation and oversight of HUD's Native American and Native Hawaiian programs. These programs are available to 566 federally-recognized Indian tribes, 5 state-recognized Indian tribes formerly eligible under the United States Housing Act of 1937, and the State of Hawaii's Department of Hawaiian Home Lands. We serve these entities directly, or through their tribally designated housing entities, by providing grants and loan guarantees designed to support affordable housing and community development activities.

Native Hawaiian Housing Block Grant Program

Title VIII of the Native American Housing Assistance and Self-Determination Act of 1996, as amended, or NAHASDA, establishes a block grant program, the Native Hawaiian Housing Block Grant (NHHBG),to carry out affordable housing activities for Native Hawaiian families eligible to reside on Hawaiian home lands. The Department of Hawaiian Home Lands (DHHL) is the sole recipient of this grant and administers the NHHBG program. DHHL is the department of government for the State of Hawaii responsible for the administration of the Hawaiian Homes Commission Act.

To address critical housing issues such as affordability, overcrowding, structural quality, and availability, DHHL has targeted a significant amount of NHHBG funds to support:

- Site improvements and infrastructure for new construction of affordable housing;
- Financial assistance for homebuyers;
- Rehabilitation of existing affordable housing units;
- Homeownership counseling; and
- Technical assistance to prepare families for home purchase and ownership.

NHHBG Program Funding and Accomplishments

The first NHHBG grant was awarded in FY 2002 for $9.6 million. Over the last ten years, NHHBG grants have ranged from $8.3 million in FYs 2006 and 2007 to a high of $12.7 million in FYs 2010 and 2012.

In the last seven years, 461 affordable homes have been built, acquired, or rehabbed with NHHBG funds, and the program has provided the basic, critical infrastructure to support new construction throughout the Hawaiian home lands. In addition, the program has provided training and technical assistance to community housing providers, lenders, and low-income residents, including 233 Native Hawaiian families trained just last year in self-help home repair, financial literacy, and home buying. Over 840 families have participated in training over the life of the program.

DHHL works with Native Hawaiian organizations, civic groups, and service agencies in the public, private, and government sectors. DHHL's housing and community development partners include: Habitat for Humanity, the Council for Native Hawaiian Advancement, USDA Rural Development and the County of Hawaii.

Most of DHHL's affordable housing projects are developed over several years. Currently, there are six NHHBG-funded housing projects in progress, all of which are at various stages of development, from design, to infrastructure installation, to home construction.

Here are a few examples:

Kumuhau and Kakaina Subdivisions

One hundred single-family homes are planned for construction on a 16-acre parcel in Waimanalo on the island of Oahu, of which, 28 lots are reserved for NHHBG-eligible families.

- $1.4 million in FY 2006 and $50,000 in FY 2007 NHHBG funds was used for on- and off-site infrastructure construction for the Kumuhau subdivision. Approximately 18 of the 52 lots (45 turnkey and 7 self-help lots) are reserved for NHHBG-eligible families.
- As of September 30, 2011, site work for Kumuhau was complete. The construction of 45 turnkey homes was underway, 22 of which were complete. Of the 22 completed homes, 3 were for NHHBG-eligible families.
- The Kakaina subdivision consists of 44 lots. This project is in the infrastructure phase. Approximately 10 of the 44 lots will be for NHHBG-eligible families.

East Kapolei I (Kanehili)

This project consists of the development of 400 single-family homes on a 92-acre parcel in Kapolei on the island of Oahu; approximately 72 of the homes will be for NHHBG-eligible families.

- $447,300 in FY 2002 NHHBG funds was applied toward the total cost of $2.5 million for project engineering and design, which was completed in March 2007.
- $1.7 million in FY 2006 NHHBG funds was used, in combination with DHHL trust funds, to pay for approximately 18 percent of the cost for mass grading and on- and off-site infrastructure construction in increment I of the subdivision.

- As of September 30, 2011, site work was complete for increment I phases 1 through 4, which includes 286 lots. House construction in increment I was ongoing, with 250 homes completed and occupied and another 30 homes under construction.

Laiopua Villages 4 and 5

Approximately 360 single-family homes are planned for construction on 2 parcels totaling 86 acres at Kealakehe in North Kona on the island of Hawaii. The homes are allocated between Village 4 (243) and Village 5 (117) of Laiopua. Seventy-two lots are reserved for NHHBG-eligible families.

- $3.8 million in FY 2003, 2004, 2005, and 2006 NHHBG funds was used for mass grading. Additional NHHBG funding will be used for infrastructure construction, house construction loans, or down payment assistance grants, and self-help technical assistance.
- $1.2 million in FY 2006 and 2007 and 2008 NHHBG funds is being used to install streets, sewer and utilities for Village 5.
- As of September 30, 2011, mass grading work was complete for Village 5 and Village 4. Installation of streets, sewer and utilities was 95 percent complete for Village 5. House construction for 45 homes in Village 5 was underway. Village 4 was in the design phase.

East Kapolei II

A total of 1,000 single-family residential lots are planned for construction on a 374-acre parcel in Kapolei on the island of Oahu, of which, approximately 200 lots will be reserved for NHHBG-eligible families.

- $53.9 million in FY 2007 and other NHHBG funds are planned to be used in combination with DHHL trust funds for on- and off-site infrastructure construction, consultant services, including engineers and architects, house construction loans or down payment assistance grants, self-help technical assistance, and utility fees.
- $3 million was used in FY 2010 to complete off-site sewer and drainage work.
- $4 million in Recovery Act funds is being used to do mass grading for East Kapolei II, increments B and C. As of September 30, 2011, this mass grading work was 90 percent complete.

Partnerships with Habitat for Humanity and other service organizations are making it possible for low-income Native Hawaiian families to achieve homeownership through the self-help method of construction in various projects on the islands of Kauai, Oahu, Maui, Molokai, and Hawaii. Partnerships have also been secured to implement a home rehabilitation grant program, a self-help home repair training program, and to provide homeownership counseling and training.

Native Hawaiian Housing Loan Guarantee (Section 184A)

The Section 184A Loan Guarantee for Native Hawaiian Housing program, known as Section 184A, was established by Section 514 of the American Homeownership and Economic Opportunity Act of 2000 (P.L. 106–569, approved December 27, 2000), which amended the Housing and Community Development Act of 1992 (12 U.S.C. 1715z-13b). The purpose of Section 184A is to provide access to sources of private mortgage financing to Native Hawaiian families who could not otherwise acquire housing financing because of the unique legal status of the Hawaiian home lands.

Eligible borrowers include Native Hawaiian families who are eligible to reside on Hawaiian home lands, the DHHL, the Office of Hawaiian Affairs, or private nonprofit organizations experienced in the planning and development of affordable housing for on Hawaiian home lands. Loans are used to construct, acquire, or rehabilitate eligible housing located on the Hawaiian home lands. The FY 2012 Appropriations Act authorized funding to be used for Section 184A refinancing.

Section 184A Program Funding and Accomplishments

In August 2005, DHHL closed on the first loan guaranteed under the Section 184A Loan Guarantee program. In May 2006, HUD executed a memorandum of agreement with DHHL that served as the foundation for subsequent loan activity. Prior to this agreement, DHHL was the only eligible participant in the program. Since 184A program activity began in FY 2005, 269 loans have been guaranteed. Given the recent authority to use the program for refinancing, and DHHL success in constructing new homes on Hawaiian home lands, HUD expects loan activity to significantly increase within the next year.

The Hawaiian Homeownership Act of 2011, Senate Bill 65

HUD supports The Hawaiian Homeownership Act of 2011 (Senate Bill 65) and its reauthorization and expansion of both NHHBG and Section 184A through 2015. DHHL is working effectively with community partners to not only increase housing opportunity on the Islands, but to build stronger, more economically vibrant and self-sufficient communities. DHHL understands the value of thoughtful planning as evidenced in its strategic plan, which includes elements of regional planning, energy efficiency and leveraging resources.

Expanding the 184A program to allow families to refinance will provide a perfect complement to the limited amount of financing options available for properties on Hawaiian home lands. The Section 184A program makes it possible for eligible Native Hawaiian families to refinance their homes at the current market rate of interest. The money saved on a monthly basis through refinancing is critical to families living in high-cost areas, and provides greater stability of Native Hawaiian communities.

And giving DHHL the ability to participate in the Title VI program will expand the leveraging capacity of federal funds, and at the same time, will decrease dependency on government dollars. Currently, only tribes or their tribally designated housing entities can participate in the Title VI program. This program is a powerful leveraging and development tool that encourages long-term projects and the leveraging of a variety of funding sources. Under Title VI, HUD can guarantee 95 percent of a loan for affordable housing activities covered under NAHASDA. Borrowers pledge a portion of their current and future housing block grant funds as security. This program has provided an incentive for lenders to get involved in the development of tribal housing.

Conclusion

In conclusion Chairman, through the reauthorization of both the Native Hawaiian Housing Block Grant and the Section 184A program we can work towards giving every Native Hawaiian family a fair shot at having a home.

Thank you again for this opportunity to appear before you today. I would be happy to answer any questions you may have.

The CHAIRMAN. Thank you, very much, Mr. Boyd. Your full statement will be included in the record. I want to thank very much for your positive testimony.

Ms. Kauhane, please proceed.

STATEMENT OF MICHELLE KAUHANE, DEPUTY DIRECTOR, DEPARTMENT OF HAWAIIAN HOME LANDS, STATE OF HAWAII

Ms. KAUHANE. Thank you, Senator.

Aloha Chairman and Senator Inouye, and Distinguished Members of the Senate Committee on Indian Affairs.

My name is Michelle Kauhane, and I thank you for the invitation and opportunity to provide testimony on behalf of the State of Hawaii, Department of Hawaiian Home Lands. Our state agency is responsible for the administration of the federal land trust established by Congress through the Hawaiian Homes Commission Act of 1920.

DHHL strongly supports Senate Bill 65, the Hawaiian Homeownership Opportunity Act of 2011, which reauthorizes federal housing assistance and loan guarantees for Native Hawaiians.

Today I will provide highlights of my written testimony that give a short overview of DHHL's role in administering the Hawaiian Homes Commission Act, describe the Native Hawaiian housing need that make NAHASADA vitally important to our progress, and share some of the ways NAHASDA has assisted in supporting Native Hawaiian homestead communities.

DHHL has a unique role as a state agency to manage the federally created land trust to reconnect Native Hawaiians to their ancestral lands in Hawaii. For the beneficiaries of the HHCA, self-de-

termination and self-governance is expressed through the existence of organizations governed by beneficiaries or homesteaders themselves.

These homestead associations have existed for decades, and have representative leadership through democratically elected processes for each homestead land area on different islands within the state.

Just as Tribes are powerful partners with the Federal Government, homestead associations are vital to our state's success in implementing the tenets of the Hawaiian Homes Commission Act as Congress intended.

After 92 years since the enactment of Hawaiian Homes Commission Act, just over 10,000 land leases have been issued to beneficiaries for homesteading purposes. An estimated 35,000 lessees and family members reside on our homestead lands throughout Hawaii. Approximately 48 percent located on Oahu, 23 percent on Hawaii island, 22 percent in Maui County and seven percent on Kauai.

In addition to the beneficiaries residing on Hawaiian Home Lands, the waitlist of individual applicants to receive a land award under the Hawaiian Homes Commission Act exceeds 26,000 individuals, with waiting times ranging from five years to 50 years.

According to an SMS 2008 survey, about 46 percent of the applicants on the DHHL waitlist have incomes below 80 percent of the HUD median. More than half of those low income applicants fall into the category between 30 and 50 percent of that same area median income.

DHHL must provide housing solutions to meet the needs of the low and very low income on the waitlist. These families continue to get passed over as they have the most difficulty in qualifying for mortgage financing based on the current sales prices that are simply out of reach for these income categories.

Since 2002, DHHL has received and utilized the NAHASDA funds primarily to support subdivision development. Approximately 75 percent of the open lands of our trust remain undeveloped. One of the largest barriers to issuing lands to individuals on the waitlist is the investment required in infrastructure for roads, utilities, water, wastewater facilities, broadband and renewable energy sources.

In addition to subdivision development, we have issued low cost loans, down payment assistance and subsidies, individual development accounts, and home repair/rehabilitation programs. Likewise, the funds have supported financial literacy and homebuyer education and counseling, as well as foreclosure prevention and lease cancellation services.

DHHL also awards grant funds to qualified entities with a wide array of programs servicing our homestead association and beneficiaries.

In addition to direct financial resources, Senate Bill 65 would also authorize credit subsidies that make mortgage capital available to Native Hawaiian beneficiaries under the HUD 184A loan program to purchase, construct and refinancing of homes.

The HUD 184A program is one of the most successful trust land focused home loan products to be sponsored by the Federal Govern-

ment. The program is one of only a very few sources of home loan capital available for financing homestead properties.

In addition, the 184A program is a remarkably affordable mortgage product with no mortgage insurance requirement.

The federal loan guarantee provided by the 184A program is powerfully important to bringing private capital to new home development in every county of the State of Hawaii where Hawaiian Home Lands are located. Since 2007 when the first loan closed, the 184A portfolio has grown to over $50 million in just over four years.

Finally, Senate Bill 65 authorized, or would authorize DHHL for loan guarantees under Title VI of NAHASDA. This eligibility would allow the Department to borrow against its annual awards to do larger scale housing development and long-term planning.

Mr. Chairman, on behalf of DHHL and Department of Hawaiian Home Lands, we thank you for your unwavering support for our homestead beneficiaries. You have always been a champion for Hawaii's people throughout your longstanding career in the United States Congress. We have been honored to share you with the rest of our nation and we welcome you back home with open arms at the end of 2012.

Senate Bill 65, the Hawaiian Homeownership Opportunity Act of 2011 is vitally important to fulfilling the mission of the Hawaiian Homes Commission Act in reconnecting Native Hawaiians with their lands.

Thank you for this opportunity to share our mana'o with you and the Committee.

[The prepared statement of Ms. Kauhane follows:]

PREPARED STATEMENT OF MICHELLE KAUHANE, DEPUTY DIRECTOR, DEPARTMENT OF HAWAIIAN HOME LANDS, STATE OF HAWAII

Aloha Chairman Akaka, Vice-Chairman Barasso and Members of the Senate Committee on Indian Affairs.

My name is Michelle Kauhane, and I thank you for the invitation and opportunity to provide testimony on behalf of the State of Hawaii, Department of Hawaiian Home Lands (DHHL). Our state agency is responsible for the administration of the federal land trust established by Congress through the Hawaiian Homes Commission Act of 1920 [1] (HHCA).

The Department of Hawaiian Home Lands strongly supports S. 65, the Hawaiian Homeownership Opportunity Act of 2011, which reauthorizes housing assistance and loan guarantees for Native Hawaiians.

I will provide additional information about why this program is so important to HHCA beneficiaries, but before doing so, I want to provide some context regarding the Department's unique role as the administrator of the Hawaiian Home Lands trust.

Hawaiian Trust Lands Under the Hawaiian Homes Commission Act

Since Hawaii's overthrow as an independent nation and the subsequent annexation to the United States, one of the most significant federal policy achievements for native Hawaiians was the enactment by the U.S Congress of the HHCA. The HHCA began as a resolution in the territorial government in Hawaii, and was championed by the territory's congressional representative, Prince Jonah Kuhio Kalanianaole. Similar to other land allotment acts of that era for Alaska Natives and American Indians, the HHCA established a land trust of approximately 200,000 acres of land located in every county in the state, to provide for the rehabilitation of native Hawaiians through the provision of land for residential, agricultural and pastoral homesteading. The Act is the clearest example of the United States' rec-

[1] Ch. 42, 42 Stat. 108 (1921)

ognition of Native Hawaiians as an indigenous people with whom the United States has a trust relationship.

Hawaii entered the Union in 1959, during a period when federal responsibilities towards indigenous peoples were often delegated to the States. Consistent with that policy, the HHCA was incorporated into Public Law 86–3, the Hawaii State Admissions Act in 1959, "[a]s a compact with the United States relating to the management and disposition of the Hawaiian home lands . . ."[2] DHHL was established by the State of Hawaii in 1961 to manage the federal responsibilities delegated to the State of Hawaii associated with administering the HHCA.

While the State of Hawaii has the authority to amend the HHCA, Section 4 of the Admissions Act requires the consent of the United States to amendments which reduce or impair certain funds, increase encumbrances on the Hawaiian Homes land trust, or change the qualification of lessees. By ensuring that actions that negatively impact the implementation of the HHCA require federal consent, the United States acknowledged its trust responsibility as it relates to the Hawaiian Homes Commission Act.

In 1995, Congress enacted the Hawaiian Home Lands Recovery Act,[3] to recover lands that had been withdrawn from the Hawaiian Homes land trust. In recognition of the United States' political and legal relationship with Native Hawaiians, the Act also required the Secretary of the Interior to designate an individual to administer the responsibilities of the United States under the Hawaiian Homes Commission Act. The Assistant Secretary of Policy, Budget, and Administration of the Department of the Interior, therefore, is charged with exercising the responsibilities of the Interior Department as it pertains to advancing the interests of the HHCA beneficiaries and assisting beneficiaries with obtaining federal services related to the promotion of homesteading opportunities, economic self-sufficiency and social well-being.[4]

DHHL is governed by a 9-member Hawaiian Homes Commission appointed by Hawaii's Governor. Its Director, a member of the Governor's cabinet, also serves as the Chairman of the Commission. DHHL, therefore, has a unique role as a state agency managing a federally created land trust to reconnect native Hawaiians to their ancestral lands in Hawaii. We embrace this unique relationship and work in partnership with the federal agencies to fulfill the federal trust responsibility as it pertains to the Hawaiian Homes land trust.

Like our American Indian and Alaska Native brethren with trust lands, we work with federal agencies to ensure that our native communities on trust lands are eligible to utilize federal programs like NAHASDA which provide much needed housing, access to capital, and opportunities for economic self-determination. We firmly believe that federal trust lands status should serve as a criterion for federal programming as a way for the United States to fulfill its federal trust responsibility to its native peoples.

Self-Determination of Native Hawaiians

In Hawaii, we do not refer to our Native peoples as tribal members or Indians, although it is clear that Congress intended the inclusion of Native Hawaiians in the federal policies of self-determination. The most common terminology most understood in the islands to represent native Hawaiians eligible for the HHCA land trust, are "beneficiary" or "homesteader". Moreover, the lands in the Hawaiian Home Land trust are referred to as "homesteads" rather than reservations. For the purposes of our testimony, these terms will be used to describe native Hawaiians and land areas under the HHCA, which was enacted by Congress during a policy period of the federal government wherein land trusts and Native allotment programs were commonly established for Native peoples in Indian Country and Alaska. The HHCA was an extension of those policies, as well as the federal policies of self-determination that have been well documents over the last century.

For the beneficiaries of the HHCA, self-determination and self-governance is expressed through the existence of beneficiary organizations governed by beneficiaries or homesteaders themselves. These organizations, called homestead associations, have existed for decades, and have representative leadership through democratically elected processes for each homestead land area on differing islands within the state. Just as tribes are powerful partners with the Federal Government, homestead associations are vital to our state's success in implementing the tenets of the HHCA as Congress intended.

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[2] Section 4, P.L. 86–3, 73 Stat. 4 (1959)
[3] P. L. 104–42, 109 Stat.357 (1995)
[4] Id. Section 206.

Homesteading Progress

After 92 years since the enactment of the HHCA, just over 10,000 land leases have been issued to beneficiaries for homesteading purposes. In the past 10 years, approximately 2,500 leases were issued. An estimated 35,000 lessees and family members reside on homestead lands throughout Hawaii. Approximately 48 percent are located on Oahu, 23 percent on the island of Hawaii, 22 percent in Maui County, and 7 percent on Kauai. Among the lessees, the majority of leases are residential (89 percent), followed by 8 percent agricultural, and the remaining 3 percent in pastoral.

According to a 2008 lessee survey conducted by SMS Research, DHHL lessee households consist of 3 to 7 people with a mean of 4.2 household members. The median household income among lessees was $48,731 in 2008, lower than the median household income for the State at $63,746. In addition, the survey estimated 51 percent of DHHL lessee households had incomes below 80 percent of the HUD median.

In addition to the beneficiaries on the land, the wait list of beneficiaries to receive a land award under the HHCA exceeds 26,000, with waiting times ranging from 5 years to 50 years. According to the SMS 2008 survey, 46 percent of the applicants on the DHHL waitlist had incomes below 80 percent of the HUD median. At least half (50.8 percent) of all applicants that are at or below 80 percent AMI on the waitlist, fall into the 51%-80 percent range, just under 30 percent fall in the 30–50 percent AMI range, and approximately 22 percent fall in the less than 30 percent AMI range.

Low Income Native Hawaiian Housing Need

For low income native Hawaiian households (those making less than 80 percent of the area media income), housing needs are severe with 68 percent of these households experiencing some kind of housing problem such as affordability, overcrowding, structural quality, availability or some combination of these problems. For very low income households (those making less than 50 percent of the area median income) the needs are even more severe with nearly 75 percent of the households in this category facing some kind of housing problem. While housing needs are serious for the native Hawaiian population as a whole, the situation is more critical for the low and very low-income households. The percentage of low-income native Hawaiian households that experience housing problems is more than double the percentage of native Hawaiian households as a whole with housing problems—68 percent versus 27 percent. For very low-income native Hawaiian households, this percentage is almost triple 75 percent versus 27 percent.

Addressing the Needs

Given the housing needs, DHHL has focused the use of the NHHBG funds on increasing the supply of affordable housing units or to rehabilitate existing units to relieve some of the overcrowding pressures and substandard living conditions experienced in many low-income native Hawaiian households. In addition, DHHL has supported healthy and safe communities. We have empowered resident organizations and continue to promote self-sufficiency for native Hawaiian families.

It is well understood, that the progress made to implement the primary purpose of returning native Hawaiians to their lands under the HHCA, is and has been inadequate. These numbers clearly show that in 2012, almost 100 years after the enactment of HHCA, there is still a strong desire by native Hawaiians to live and work on the Hawaiian Home Lands. There is no question that DHHL and the HHC have been underfunded and under-resourced for many years. Federal programs such as NAHASDA and the HUD 184A Loan Guarantee program help to fulfill the mission of the HHCA by reconnecting native Hawaiians to their ancestral lands.

S. 65, Hawaiian Homeownership Opportunity Act of 2011

DHHL strongly supports S. 65, the Hawaiian Homeownership Act of 2011, a vital tool for native Hawaiian beneficiaries of the HHCA. S. 65 reauthorizes NAHASDA Title VIII funding, provides necessary credit subsidies to allow HHCA beneficiaries to utilize the HUD 184A loan guarantee program for purchasing and refinancing home loans like their Indian and Alaska Native counterparts, and makes DHHL an eligible entity for NAHASDA Title VI loan guarantees.

NAHASDA

In 2000, the congress enacted Title VIII of NAHASDA, creating for the fist time, a modest allocation of federal funding to support the development of affordable housing for low- and moderate-income beneficiaries.

Since 2002, DHHL has received and utilized NAHASDA funding to support subdivision development. Approximately seventy-five percent of the open lands of the Hawaiian Home Lands trust remain undeveloped. One of the largest barriers to

issuing land to the 26,000+ individuals on the waitlist is investment in infrastructure for roads, utilities, water/waste water facilities, broadband and renewable energy sources. NHHBG funds have been a vital source of infrastructure funding for DHHL since 2002. These fund have brought vital leverage to our trust funds and have allowed us to continue housing development.

In addition to subdivision development, NHHBG funds have provided grants to qualified entities with programs servicing homestead beneficiaries, loans, down payment assistance and individual development account programs, and home repair/rehabilitation programs. Likewise, the funds have supported financial literacy and homebuyer education and counseling, as well as foreclosure prevention/lease cancellation services.

HUD 184A Program

The HUD 184A program is one of a very few sources of home loan capital available to native Hawaiians residing on Hawaiian Home Lands. The HUD 184A federal loan guarantee is powerfully important in bringing private capital to new home development in every county of the State of Hawaii where Hawaiian Homes trust lands are located. This program is one of the most successful trust land focused home loan products to be sponsored by the federal government. S. 65 would provide credit subsidies that make mortgage capital available to native Hawaiian beneficiaries of the HHCA to purchase, construct, or refinance their homes.

Title VI Loan Guarantees

S. 65 authorizes DHHL for loan guarantees under Title VI of NAHASDA. This eligibility would allow us to borrow or issue debt for affording housing activities which helps us to leverage additional resources to increase opportunities of homeownership for homestead families.

Conclusion

Mr. Chairman, on behalf of the Hawaiian Homes Commission and the Department of Hawaiian Home Lands, thank you for your unwavering support of homestead beneficiaries. You have always been a champion for Hawaii's people. Your efforts over your longstanding career in the United States Congress have truly helped our people to reconnect with the 'aina. You championed legislation that allowed homesteads to be inherited by family members meeting the 25 percent blood quantum. You created the Native American Veteran Direct Loan Program to address the unique situation faced by Native American veterans seeking to utilize the VA Home Loan Program on trust lands. Through the Hawaiian Home Lands Recovery Act you ensured not only that the Hawaiian homes trust was replenished after lands were wrongly withdrawn, but you also ensured that the United States designated a federal official to assist homestead beneficiaries at the federal level. And, most importantly, you created a pathway for the United States and Native Hawaiians to engage in a process of reconciliation to address the many longstanding issues resulting from the illegal overthrow of the Kingdom of Hawaii through the enactment of P.L. 104–150, the Apology Resolution.

As the Chairman of the Senate Committee on Indian Affairs, you have worked to ensure continued economic self-determination in native communities through increased access to capital and federal programs and services. You have championed the federal trust responsibility and worked to ensure that the United States fulfill its responsibilities to promote the welfare of its indigenous peoples. Mr. Chairman, we have been honored to share you with the rest of our nation and we welcome you back home with open arms at the end of 2012.

S. 65, the Hawaiian Homeownership Opportunity Act of 2011, is vitally important to fulfilling the mission of the Hawaiian Homes Commission Act to reconnect native Hawaiians with their lands. Thank you for the opportunity to share our mana'o with you and your Committee.

The CHAIRMAN. Thank you very much, Ms. Kauhane, for your testimony.

I know our Senator Inouye has to leave, so I'm going to ask Senator for any questions he may have.

Senator INOUYE. Thank you very much, Mr. Chairman. I've submitted the questions, but I would like to thank Mr. Boyd for making the special effort to be with us for this important hearing. I know that you had to go out of your way to do this. We appreciate it.

Ms. Kauhane, we appreciate your leadership. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Inouye. Thank you for your leadership in Hawaii and wish you well and have a safe trip.

Senator INOUYE. Thank you.

The CHAIRMAN. My first question is to Mr. Boyd. Thank you so much for being here, Mr. Boyd, I appreciate it, your presence.

There has been some discussion regarding the spend-down rates of some Tribes under the NAHASDA program. My understanding is that the NAHASDA allows Tribes some flexibility in how and when to spend their annual allocations.

Can you provide examples, examples of why NAHASDA allows grantees to carry funds forward? And explain why this is an important ability for grantees to have it.

Mr. BOYD. Thank you, Mr. Chairman.

Since the inception of NAHASDA, and everything within the development of operating the Block Grant Program is done by negotiated rulemaking. So many things that we set into place, in addition to what was originated in the statutes and regulations, we have always added over the years. And as a matter of fact NAHASDA will be up for reauthorization in 2014.

But at any rate, I wanted to make that statement because it's not only HUD's involvement in the process of developing the operations of NAHASDA, but it also includes a lot of participation from Tribes throughout the country.

One of the things that Tribes noticed, and we noticed early on, was some of the smaller Tribes—and, again, we operate under a Grant Block formula and based on need.

But at any rate, over the years, we've found out that some of the smaller Tribes may only receive like about $50,000 a year. And so for those smaller Tribes, and some of the medium size Tribes, it's difficult to have enough money to some construct a home in one year given that amount.

So through appropriations and no-year funding, Tribes are allowed to build on appropriations over several years so that they will obtain enough money to build a unit. In some cases, it's pretty dramatic in some situations.

Another example probably would be a good case like in Alaska where you have regional housing preparations that have many villages under their jurisdiction, and so I think the no-year funding helps them also to roll those funds over for a couple of years so that they can adequately serve everybody within their communities.

The CHAIRMAN. Thank you very much for that response.

Michelle, the waitlist for Hawaiian Home Lands include persons who have been waiting for award, sometimes in excess of 20 years. Can you describe some of the barriers to getting these people off the waitlist and onto the land?

And describe what role NAHASDA funding and the Section 184A Loan Program played in helping the Department meet its mandate under the Hawaiian Homes Commission Act.

Ms. KAUHANE. Thank you, Senator.

Yes, many of those folks, particularly low and very low income families who have been on the waitlist do get passed when they are required to qualify for the mortgage prior to being awarded their lot.

And so NAHASDA has helped the Department in many ways with dollars in the ground for infrastructure, which then represents subsidies to purchase down the sales price of the homes so that families in low income categories can actually qualify for the mortgages at hand.

The HUD 184A Loan Program in particular has been partly important to add a new source of mortgage capital to homestead communities. Prior to that we had VA, USDA and FHA 247. FHA 247, which was the more highly used of the loan products, requires beneficiaries to add into its purchase price almost four percent on top of the sales price for mortgage insurance, whereas the 184A program is very affordable in that they can finance just one percent as a guaranteed fee. So the guarantee that comes from the Federal Government under the 184A Loan Program is vitally important to new access to capital for our homestead communities.

The CHAIRMAN. Thank you, very much.

I want to commend your Department for the work you've been doing in helping the homesteaders out, and look forward to continuing to do that.

To the both of you, does the census data related to the Hawaiian Home Lands tracts accurately reflect the financial condition of Native Hawaiians remaining on the waitlist? And is there a continuing need for NAHASDA funding to the Native Hawaiian people? Michelle.

Ms. KAUHANE. Absolutely, Senator.

I think that the U.S. Census data that is upholding households, existing families who may be currently living on the land, does not accurately reflect necessarily those folks who are on the waitlist.

The folks who are on the land and those income statistics show those who are actually eligible to qualify for the mortgage financing, and therefore, are on the land and in those households today. Whereas, many of the folks on the waitlist who are in the lower income categories were unable to qualify for mortgage financing and, thus, remain on the list.

The CHAIRMAN. Thank you, Mr. Boyd.

Mr. BOYD. Senator, thanks for the question.

We really see our partnership and our relationship with Native Hawaiians as being in the long term. We don't think that it's going to end at any time, to be honest. So we build our program, and certainly we do look at census data. I haven't really had a chance to analyze the current census data. But just looking at the need, and the good work that the Department of Hawaiian Home Lands is doing, we think that the additions that I testified on this morning will be very, very helpful.

I think the whole idea with regard to our present economy and every additional tool that we can lend to the Native Hawaiian community in fostering homeownership and housing within your state will be very beneficial, and help to create greater sustainability.

The CHAIRMAN. I want to thank our federal and state government officials for their responses. We look forward to passing this

bill in the U.S. Senate and, of course, in the House with the help of Congresswomen Hirono and Hanabusa, and look forward to further assistance to our people.

So I want to thank you very much. If we have any further questions, we'll get it to you. As Senator Inouye mentioned, he has questions that he has submitted for your answers.

So, again, mahalo nui loa. Thank you very much.

I would like to invite the second panel to the witness table. Serving our second panel is Honorable Colleen Hanabusa, Congresswoman for Hawaii's First District; Professor Melody Mackenzie, Associate Professor of Law and Director of Ka Huli Ao Center for Excellence in Native Hawaiian law at University of Hawaii, Richardson School of Law in Honolulu, Hawaii; the Honorable Brickwood Galuteria, Majority Leader of the Hawaii State Senate in Honolulu, Hawaii; and Mr. Richard Naiwieha Wurdeman, President of the Native Hawaiian Bar Association in Honolulu, Hawaii.

Welcome and aloha to you, and look forward to your testimonies. Now, I would like to call on Congresswoman Hanabusa for your testimony. Please proceed.

STATEMENT OF HON. COLLEEN HANABUSA,
U.S. REPRESENTATIVE FROM HAWAII

Ms. HANABUSA. Thank you, Senator Akaka.

Good morning, Mr. Chairman. First of all I want to thank you for this opportunity to speak on Senate Bill 65, and I would like to ask that my written testimony become part of the record.

The CHAIRMAN. All of your full statements will be part of the record.

Ms. HANABUSA. Thank you. And the reason I ask that is because I would like to deviate a little from the statement to share with the members of our community as to how important Senate Bill 65 is, and the personal experience that I had in dealing with it.

When I first got elected to Congress, we were on a continuing resolution, as Senator, you're very well aware of. And one of the issues in H.R. 1, which was the continuing resolution that the House was offering as the appropriation measure to fund the 2011 fiscal year, excluded the funding for the Native Hawaiians under the NAHASDA funding.

And the reason why they could do that, is because under our rule, which is 21, and I believe the Senate has as comparable rule, that if it is not authorized in statute, then we are not able to actually amend an appropriation measure to have it included.

I sat on the floor of the House until 3 o'clock in the morning as continuing resolution, the House Resolution 1, the continuing resolution for 2011 was making its way through. And I was told then that I would be ruled out of order, because as we all know, Title VIII technically expired in the year 2004 when it was first instituted in 2000.

So the lack of the authorization in the NAHASDA statute made it almost impossible for anyone, if the appropriators did not put it in, that they would be able to add it in for funding. To me the consequence of that would have been absolutely devastating for the Department of Hawaiian Home Lands. We all know that the trust obligation exists. However, notwithstanding that, we also know

that as of next year the settlement of what we used to call the waitlist claims, would also expire.

And having said that, the funding now becomes a critical matter. NAHASDA has fulfilled that gap for us. And I know that from my role in the State Legislature and chairing Hawaiian Affairs along with many of my other committees along the way.

So this Senate bill, the Section 1 is extremely critical for, I believe, the obligation of the United States to continue to fulfill the promises made of the provision of housing for the Native Hawaiians. Not only that, but it is also critical for really the preservation of the culture, as well as the people, which was how the Hawaiian Homes Commission Act of 1920 was initially initiated.

In addition to that, Senate Bill 65 addresses what I consider to be very important provisions as well. One of the parts that was lacking, which is now set forth in Section 2 of the bill, is the reference to Section 184. And I'm not sure if everyone recognizes, but the word "refinance" is dominant in there. That was one of the provisions that was lacking in the original version. And that also, I believe, hampered the Department of Hawaiian Home Lands' ability to assist in people receiving their housing and being able to move ahead, and that is the term "refinance".

We also know that it also eliminates a lot of the other language, and makes it clear that the criteria standard housing and location on the Hawaiian Home Lands.

In addition to that, Section 4 of the bill—that was Section 3—amends Title VI of the NAHASDA. And Title VI is really the loan aspects of it. And it makes it also very clear that where the language was: Where Tribally designated housing identities with Tribal approval. And those language still remain and we insert: Also or by the Department of Hawaiian Home Lands. That is found throughout the title, and whatever title is referenced, whether it's Title I of the NAHASDA, we have also added in Title VIII, which would now, by Section 1 of this bill—Section 2 would authorize its continuation until the fiscal year 2015.

Senator, I cannot impress upon everyone how critical this bill is, because it will be the funding mechanism for the Department of Hawaiian Home Lands. It will be as the Department of Hawaiian Home Lands struggles for funding from the state when its trust monies run out, as to how we're going to be able to fulfill this obligation to place Native Hawaiians on the land.

So I cannot thank you enough for Senate Bill 65, and for the ability to have co-sponsored it in the House. And to ask, again, that you inform your colleagues, which I know you will, and that for the community to recognize how significant a piece of legislation this is. And though it may only be four pages, it really does hold within it the future of the Department of Hawaiian Home Lands.

Thank you very much, Senator, for the opportunity to be here with you, and to testify on this very important measure.

[The prepared statement of Ms. Hanabusa follows:]

PREPARED STATEMENT OF HON. COLLEEN HANABUSA, U.S. REPRESENTATIVE FROM HAWAII

Good morning Mr. Chairman and members of the Committee:

I appreciate the opportunity to submit my comments on S. 65, the Hawaiian Homeownership Opportunity Act of 2011 which would reauthorize Title VIII of the Native American Housing Assistance and Self-Determination Act (NAHASDA), benefitting native Hawaiians. I am a cosponsor of the House companion bill, H.R. 2648 and feel strongly that passage of this legislation is of critical importance for this Congress.

Title VIII of NAHASDA is more than an affordable housing initiative—it is a critical piece of legislation for the people of Hawai'i because it fulfills a trust obligation that Congress created in 1920 with the passage of the Hawaiian Homes Commission Act. The Act recognized that it was necessary to return native Hawaiians to their land to "fully support self-sufficiency.and the preservation of the values, traditions, and culture of native Hawaiians." This trust responsibility to the native Hawaiian people has since been reaffirmed by federal legislation aimed at protecting native Hawaiians on their land, such as the Hawaiian Homelands Recovery Act (P.L. 104–42), the Native Hawaiian Education Act (20 USC § 4901–1909), and inclusion of Native Hawaiians in the Native American Programs Act of 1974 (42 U.S.C. 2991 et seq.), the National Historic Preservation Act (16 U.S.C. 470 et seq.), the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.) and many other statutes.

This bill would extend the authorization to cover the costs of federal guarantees for financing for tribal housing under 25 U.S.C. 4195(b) from 2011 to 2015. The importance of this reauthorization became very evident when the House Appropriations Committee cut the NAHASDA funding for native Hawaiians in HR1, the Continuing Resolution (CR) for 2011. Rule XXI of the Rules of the House of Representatives for the One Hundred Twelfth Congress prohibits any amendment, not previously authorized by law, which would appropriate money to said program. In essence funding for native Hawaiians under NAHASDA will always be at the mercy of the appropriators, irrespective of the merits of the program and/or the trust obligations of the Congress.

Funding of the program would allow for continued facilitation of affordable housing opportunities for eligible native Hawaiians on their trust lands, a program administered by the State of Hawai'i with significant oversight by the Federal Government as a condition of statehood. This program has a history of being very successful, effective, and non-partisan—one that Hawai'i's former Republican Governor considers to be her legacy. The Department of Hawaiian Homelands has been able to extend support to native Hawaiians not only through placement of families on homesteads, but also through their down payment assistance program and home loan mortgage assistance program, and the development of renewable energy projects and the construction of energy efficient homes for beneficiaries.

In short, this program does just what it was intended to do, which is support the self-sufficiency for native Hawaiians on their home lands, and it is the responsibility of Congress to continue to uphold this trust obligation. As a matter of policy, Congress must strive to ensure that Native Hawaiians have parity with other federally recognized Native peoples in the administration of the trust responsibility and the protection of their rights.

Again, thank you very much for the opportunity to testify before the committee. I look forward to engaging in dialogue regarding the reauthorization of NAHASDA Title VIII and continuing the important work of the Committee to uphold these Native rights.

The CHAIRMAN. That you, very much, Congresswoman Hanabusa. Thank you for your stalwart service in the U.S. House of Representatives. You've served Hawaii real well. Thank you for your explanation of the bill further, and also to stress the importance of that bill for Hawaii, and people of Hawaii, for all the people of Hawaii. And so thank you much for your leadership in this.

And now I would like to call on Ms. Melody for your testimony. Please proceed.

STATEMENT OF MELODY MACKENZIE, ASSOCIATE PROFESSOR OF LAW, MELODY KAPILIALOHA MACKENZIE; DIRECTOR, KA HULI AO CENTER FOR EXCELLENCE IN NATIVE HAWAIIAN LAW, WILLIAM S. RICHARDSON SCHOOL OF LAW

Ms. MACKENZIE. Thank you so much, Mr. Chair. Mahalo for the opportunity to testify on S. 65.

My testimony is going to be a little different from what you've heard so far. I'm going to specifically focus on the special political and legal relationship between United States and Native Hawaiian people, sometimes called the trust relationship. This relationship has been acknowledged and reflected in federal actions and legislation for almost a century.

I also want to note that Native Hawaiians are really the only Native people in the United States who are in essence federally recognized, but do not have a specific government-to-government relationship clearly delineated and spelled out with the Federal Government.

The relationship between Native Hawaiians and the Federal Government arises from many sources, but I wish to identify and talk about four specific sources.

The first, of course, is federal and congressional authority in relation to Native peoples and the status of Native Hawaiians as indigenous, aboriginal, Native people of Hawaii.

As you know, the Indian Commerce Clause of the U.S. Constitution gives Congress the authority to "regulate commerce with the Indian Tribes".

This power is broad and has often been described as plenary authority. The Clause's reference to "Indian Tribes" I believe does not limit congressional authority to take action only on behalf of Native groups organized as Tribes or indigenous to the continental United States. Instead, to the framers of the U.S. Constitution, an Indian Tribe was simply a distinct group of indigenous people set apart by their common circumstances, a definition that obviously applies to Native Hawaiians.

Native Hawaiians are undoubtedly the indigenous, native, aboriginal people of Hawaii. And modern day Native Hawaiians are linked not only by ancestry, but also by culture, language, history and land to the original inhabitants of Hawaii.

Indeed, in 2011, the State of Hawaii took extraordinary action of officially recognizing the "indigenous, aboriginal, maoli" status of Native Hawaiian peoples.

I'm sure that Senator Galuteria will be speaking on that more.

Secondly, I would like to point to the role of the U.S. in the 1893 overthrow of the Hawaiian Kingdom and deprivation of the lands and sovereignty of Native Hawaiian people as also a basis for that needed relationship between the United States and Native Hawaiian people.

The facts of that incident are very well known: The landing of U.S. troops at the behest of Minister John L. Stevens in support of a small group of non-Hawaiian businessmen, including citizens of the United States, to overthrow the indigenous and lawful government of Hawaii; and the eventual annexation of Hawaii in 1898, through a joint resolution which made no provision for vote by Native Hawaiians or other citizens of the Hawaiian Kingdom. Under

that joint resolution, the United States receives approximately 1.8 million acres of the ceded public crown and government lands of the Kingdom.

As a result of these actions by the United States—its participation in the overthrow and its ultimate annexation of Hawaii—the United States was instrumental in depriving Native Hawaiians of their sovereignty and their national lands.

Third, I point to the entire course of dealings, of federal dealings over an extended period of time, that demonstrated that the United States has interacted with Native Hawaiians based on the specific political and legal relationship and the responsibility that it holds towards its Native peoples generally.

You discussed very eloquently this morning the 1921 passage of the Hawaiian Homes Commission Act and its enactment. I just want to note that in the congressional record, it's clear that Congress found constitutional precedence for the act in previous enactments granting Indians and others special privileges in using public lands.

Another action during the territory period, in 1938 Congress again exercised its authority by granting Native Hawaiians exclusive fishing rights to portions of the Hawaii National Park.

In 1959 the Hawaii Admission Act has been discussed by several testifiers this morning as well as yourself. I also want to point out that Section 5 of the Admission Act commands the state to hold the ceded lands in trust for five trust purposes, one of which is the betterment of the conditions of Native Hawaiians, as defined in the Hawaiian Homes Commission Act.

Section 4 of the Act has also been discussed, requires the State of Hawaii, as a compact with the United States, to incorporate the Hawaiian Homes Commission Act in the state constitution. And moreover, under the Hawaiian Homes Commission Act itself, Congress has retained the ultimate authority to alter, amend or repeal the Hawaiian Homes Commission Act.

So while, indeed, the state gained principal responsibility for administration of the Hawaiian Homes Commission Act in 1959, the Federal Government retains significant authority over that act.

Significantly, of course, in 1993 the U.S. passed—the Congress passed the Apology Resolution and apologized to the Native Hawaiian people for the U.S. participation in the overthrow of the Hawaiian Kingdom.

I would also point to other federal actions, such as the Mauka to Makai Report issued by the U.S. Department of Interior and U.S. Department of Justice and the establishment of Office of Native Hawaiian Relations within the Department of the Interior.

As you obviously know, Congress has included Native Hawaiians in laws enacted to benefit other native peoples in the United States. And more specifically Congress has enacted specific laws relating solely to the Native Hawaiian people pursuant to its authority under the Indian Commerce Clause. These include the Native Hawaiian Education Act and the Native Hawaiian Health Care Improvement Act. And the findings in both of these acts specifically refer to the "trust relationship" between Native Hawaiian people and the United States.

And, finally, I would point to the U.N. Declaration on the Rights of Indigenous People, which is now endorsed by the United States, that it supports the continued recognition and development of that special political and legal relationship between the United States and the Native Hawaiian community.

Thank you again, mahalo nui for the opportunity to testify this morning.

[The prepared statement of Ms. Mackenzie follows:]

PREPARED STATEMENT OF MELODY MACKENZIE, ASSOCIATE PROFESSOR OF LAW, MELODY KAPILIALOHA MACKENZIE; DIRECTOR, KA HULI AO CENTER FOR EXCELLENCE IN NATIVE HAWAIIAN LAW, WILLIAM S. RICHARDSON SCHOOL OF LAW

Mr. Chairman, Mr. Vice Chairman, and distinguished Members of the Committee, mahalo for the opportunity to testify on S. 65, the Hawaiian Homeownership Act of 2011. My testimony will focus on the special political and legal relationship between the United States and the Native Hawaiian community that has been acknowledged and reflected in federal actions and legislation relating to Native Hawaiians for over a century.

I currently direct the Native Hawaiian law program at the William S. Richardson School of Law, have written and litigated extensively on Native Hawaiian legal issues and, along with my colleagues Sherry Broder and the late Prof. Jon Van Dyke, have represented the Office of Hawaiian Affairs in several important cases, most recently in relation to the public or "ceded" lands trust. I want to clarify, though, that the views expressed here reflect my own judgment about the historical facts and legal issues. I also wish to acknowledge that much of the information shared here is well documented and well known to the Chair and other members of the Committee. Nevertheless, for a complete and accurate record, I believe it is important to restate this history and information.

The Relationship Between the United States and the Native Hawaiian Community

The special political and legal relationship between the United States and Native Hawaiians arises from several sources. These include: Federal and Congressional authority in dealing with the native peoples of the United States combined with the status of Native Hawaiians as the indigenous, aboriginal, native people of Hawai'i; the role of the United States in the overthrow of the Hawaiian Kingdom and the deprivation of the lands and sovereignty of the Native Hawaiian people; the course of Federal interaction and dealings with Native Hawaiians; and, the recent international recognition of the rights of Indigenous Peoples

I. Federal and Congressional authority in relation to native peoples and the status of Native Hawaiians as the indigenous, aboriginal, native people of Hawai'i

One source of the United States' power over Indian affairs derives from Congress' special authority under the Indian Commerce Clause, which allows Congress

to "regulate commerce with . . . the Indian Tribes."[1] While this power is broad and has been characterized as plenary, the acts of Congress and executive officials are subject to judicial review under constitutional and administrative law principles.[2]

The United States Supreme Court first analyzed the federal relationship with Native Americans in the "Marshall trilogy."[3] In sum, these decisions established that the United States dealt with Indian tribes as separate, distinct sovereign entities that had not surrendered their independence and right to self-government by associating with a stronger government and "taking its protection."[4] Rather, the federal government, as a result of treaties and other agreements negotiated with the tribes, became a trustee for the Indians, with a special role to oversee and protect many of the possessions of Indians from non-Indians. Indian tribes are not foreign nations, but are distinct political entities, akin to "domestic dependent nations," whose relation to the United States is like that "of a ward to his guardian."[5] In more recent decisions, the United States Supreme Court has recognized that Indian tribes are distinct, independent political communities that possess powers of self-government by reason of their original tribal sovereignty.[6] In general, the powers of Indian tribes are "inherent powers of a limited sovereignty which has never been extinguished."[7]

The Indian Commerce Clause's reference to Indian Tribes does not limit congressional authority to take action only on behalf of indigenous groups organized as tribes or native to the continental United States.[8] To the framers of the Constitution, an "Indian tribe" was simply a distinct group of indigenous people set apart by their common circumstances,[9] a definition that Native Hawaiians certainly satisfy.

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[1] U.S. CONST. art. 1, § 8. In addition, the Treaty Clause, U.S. CONST. art. II, § 2, Cl. 2, gives the President the authority, with the consent of the Senate, to make treaties with the Indian tribes. The U.S. Supreme Court has also held that the "existence of federal power to regulate and protect the Indians and their property" is also implicit in the structure of the Constitution. Board of County Comm'rs v. Seber, 318 U.S. 705, 715 (1943).

[2] Delaware Tribal Business Committee v. Weeks, 430 U.S. 73 (1977); U.S. v. Sioux Nation, 448 U.S. 371 (1980).

[3] Johnson v. M'Intosh, 21 U.S. (8 Wheat.) 543 (1823); Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831); Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832).

[4] Worcester v. Georgia, 31 U.S. (6 Pet.) 515, 560 (1832).

[5] Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1-2 (1831).

[6] United States v. Wheeler, 435 U.S. 313, 323-24 (1978); United States v. Lara, 541 U.S. 193, 198 (2004).

[7] United States v. Wheeler, 435 U.S. at 328.

[8] *See* Montoya v. United States, 180 U.S. 261, 266 (1901) for the U.S. Supreme Court's discussion of the term "Indian tribe."

[9] Columbus applied the term "Indian" to the native people of the New World believing that he had found a route to India. The term has been understood ever since to refer to the native peoples who inhabited the New World before the arrival of Europeans. *See* Johnson v. M'Intosh, 21 U.S. (8 Wheat.) 543, 572-574 (1823) (referring to Indians as "original inhabitants" or "natives" who occupied the New World before discovery by "the great nations of Europe").

Native Hawaiians are undoubtedly the indigenous, native, aboriginal people of Hawai'i and modern Native Hawaiians are linked not only by ancestry, but also by culture, language, history and land to the original inhabitants of Hawai'i.[10] Indeed, in 2011, the State of Hawai'i took the extraordinary action of officially recognizing the "indigenous, aboriginal, maoli" status of Native Hawaiians.[11]

As discussed below, Congress has often legislated on behalf of Native Hawaiians, implicitly, and often explicitly, recognizing them as the native people of Hawai'i, and oftentimes including them in legislation for other native people of the United States. Native Hawaiians, as the modern day descendants of the indigenous, aboriginal, native people of Hawai'i, fall within congressional authority under the Indian Commerce Clause.

II. The U.S. Role in the 1893 Overthrow of the Hawaiian Kingdom and the deprivation of the lands and sovereignty of the Native Hawaiian people

Throughout the nineteenth century, the United States recognized the independence of the Kingdom of Hawai'i and extended full and complete diplomatic recognition to the Hawaiian government. In 1842, U.S. President John Tyler recognized the sovereignty of Hawai'i and declared it the official policy of the United States to support Hawaiian independence.[12] The United States entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1849, 1875, and 1884.[13] In 1893, the United States Minister assigned to the Kingdom of Hawai'i, John L. Stevens, conspired with a small group of non-Hawaiian residents of the Kingdom, including citizens of the United States, to overthrow the indigenous and lawful government of Hawai'i.

In January 1893, Queen Lili'uokalani, constrained by a constitution that had been forced upon her brother in 1887, sought to promulgate a new constitution returning authority to the throne and the Native people.[14] Using this as a pretext, a small group of men representing Western commercial interests formed a Committee of Safety to

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[10] *See generally*, Derek H. Kauanoe & Breann Swann Nu'uhiwa, *We Are Who We Thought We Were: Congress' Authority to Recognize a Native Hawaiian Polity United by Common Descent*, ASIAN-PAC. L. & POL'Y J. (forthcoming Spring 2012). *See, also,* DAVIANNA PŌMAIKA'I MCGREGOR, NA KUA'AINA 1-48 (2007) [hereinafter "NA KUA'AINA"]; JON VAN DYKE, WHO OWNS THE CROWN LANDS OF HAWAI'I? 11-18 (2008) [hereinafter "VAN DYKE, CROWN LANDS"]; FELIX S. COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § § 4.07 [4] [a] (Nell Newton ed. 2005) [hereinafter "COHEN'S HANDBOOK"].

[11] Act of July 6, 2011, No. 195, §§ 1 & 2. Maoli means "[n]ative, indigenous, genuine, true, real." MARY KAWENA PUKUI & SAMUEL H. ELBERT, HAWAIIAN DICTIONARY 222 (1971).

[12] Sen. Ex. Docs., 52nd Cong 2d. Sess., No. 77, 35-37 (1842).

[13] In 1826, the first formal agreement between the United States and the Hawaiian Kingdom was negotiated although it was never ratified by the U.S. Senate. CHARLES I. BEVANS, 3 TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES OF AMERICA, 1776-1949, 861 (1971); *id.* at 864, 9 Stat. 977; *id.* at 874, 19 Stat. 625; *id.* at 878, 25 Stat. 1399.

[14] TOM COFFMAN, NATION WITHIN 119-120 (2003).

overthrow the Hawaiian government.[15] They received the aid of Minister Stevens, who caused U.S. military forces to land in Honolulu on January 16, 1893.[16] On the afternoon of January 17th, the Committee of Safety proclaimed the Hawaiian monarchy abolished and the establishment of a provisional government.[17] Minister Stevens quickly extended diplomatic recognition to the provisional government, even before the Queen yielded. The Queen, seeking to avoid bloodshed, relinquished her authority to the United States under protest, fully expecting that the United States would repudiate Stevens' actions.[18]

On February 1, Stevens proclaimed Hawai'i a protectorate of the United States and the American flag was raised in Honolulu.[19] The provisional government immediately sought annexation to the United States. After an investigation, however, newly inaugurated President Grover Cleveland called for restoration of the monarchy. In a message to Congress on December 18, 1893, President Cleveland admitted that the government of a peaceful and friendly people was illegally overthrown. "A substantial wrong has thus been done," concluded the President, "which a due regard for our national character as well as the rights of the injured people requires that we should endeavor to repair."[20] Realizing that annexation would not be immediately forthcoming, on July 4, 1894, the Provisional Government declared itself to be the Republic of Hawai'i.[21]

In 1897, U.S. President William McKinley took office on a platform advocating "control" of Hawai'i. The new administration negotiated an annexation treaty ratified by the Republic's Senate.[22] Native Hawaiians and other citizens of Hawai'i presented

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[15] Joint Resolution to Acknowledge the 100th Anniversary of the January 17, 1893 Overthrow of the Kingdom of Hawai'i, Pub. L. No. 103-150, 107 Stat. 1510 (1993), para. 5 [hereinafter "Apology Resolution"].

[16] *Id.*, para 6.

[17] *Id.*, para. 7.

[18] LILIUOKALANI, HAWAII'S STORY BY HAWAII'S QUEEN 387 (12th ed. 1976); Apology Resolution, para. 9.

[19] Apology Resolution, para. 11.

[20] President's Message to Congress Relating to the Hawaiian Islands (December 18, 1893). House Executive Documents No. 47, 2nd Session, 53rd Congress, 1893-94, vol. 27, "Hawaiian Islands," iii-xvi.

[21] Apology Resolution, para. 20. WILLIAM ADAM RUSS, JR., THE HAWAIIAN REPUBLIC (1894-1898), at 33-34 (1961). Russ notes:

> Native Hawaiians were, perhaps, not extremely sophisticated in governmental matters, but it took no great amount of political insight to perceive that . . . [the Republic's] constitutional system was a beautifully devised oligarchy devoted to the purpose of keeping the American minority in control of the Republic. Hence, even those Kanaka (Hawaiians) who could fulfill the requirements generally refused to register, to vote, and to take part in the Government when it was established.

Id. at 36.

[22] Resolution of the Senate of Hawaii Ratifying the Treaty of Annexation of 1897; WILLIAM ADAM RUSS, JR., THE HAWAIIAN REVOLUTION (1893-94), 198 (1959).

petitions to the U.S. Senate—over 21,000 signatures—protesting annexation and calling for the restoration of the Hawaiian monarchy.[23] The 1897 annexation treaty failed.[24]

But the next year, pro-annexation forces introduced a joint resolution of annexation. The annexation of Hawai'i by joint resolution was hotly debated in the U.S. Senate, with many arguing that the United States could acquire territory only under the treaty-making power of the U.S. Constitution, requiring ratification by two-thirds of the Senate.[25] Nevertheless, with the advent of the Spanish-American War, the islands became strategically significant.[26] Ultimately, the U.S. acquired Hawai'i through a joint resolution, with a simple majority in each house.

The Joint Resolution of Annexation[27] made no provision for a vote by Native Hawaiians or other citizens. Under the resolution, the United States received approximately 1.8 million acres of public, Government, and Crown lands.[28] In the mid-19th century conversion of lands to fee simple ownership known as the Māhele, Kamehameha III had set apart "forever to the chiefs and people," more than 1.5 million acres of Government Lands.[29] At the same time, Kamehameha III had reserved the Crown Lands as his own personal lands and as a source of income and support for the crown.[30] Thus, although "the fee simple ownership system instituted by the Māhele and

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[23] In 1897, a Hawaiian delegation carried two sets of petitions – one gathered by the Hui Aloha 'Āina and the other by the Hui Kālai'āina – with almost 38,000 signatures against annexation, to Congress. Senator George Hoar, who met with the delegation, read the text of the Hui Aloha 'Āina petitions, which had garnered over 21,000 signatures, into the Congressional Record during the Senate debate on annexation. NOENOE K. SILVA, ALOHA BETRAYED: NATIVE HAWAIIAN RESISTANCE TO AMERICAN COLONIALISM 157-59 (2004).

[24] Silva notes that the Hawaiian delegation was originally told that there were 58 votes in the Senate for the treaty, only two votes shy of the 60 needed for passage. By the time the delegation left Washington, there were only 46 votes on the pro-annexation side. *Id.*

[25] Annexationists pointed to the acquisition of Texas in 1845 by joint resolution as precedent, but Texas had been brought into the Union under Congress' power to admit new states. Further, the joint resolution utilized in the Texas case was approved by a plebiscite held in Texas. No plebiscite was proposed for Hawai'i. One Senator offered an amendment to the measure providing for such a vote by all adult males, but it was defeated. Finally, on June 15, 1898, by a vote of 209 to 91, the House approved the resolution. On July 6, 1898, the resolution passed the Senate by 42 to 21, with 26 abstentions. Congressional Record, 55 Cong., 2nd Sess 6149 (June 20, 1898); *id.* at 6310 (June 30, 1898); *id.* at 6709-10 (July 6, 1898); *id.* at 6018 (June 5, 1898); *id.* at 6712 (July 6, 1898).

[26] See, e.g., *id.* at 5982 (June 15, 1898); Appendix at 669-70 (June 13, 1898).

[27] Joint Resolution to Provide for Annexing the Hawaiian Islands to the United States of July 7, 1898, 30 Stat. 750 [hereinafter "Joint Resolution"].

[28] *Id.* Apology Resolution, para. 25.

[29] See 2 REVISED LAWS OF HAWAII, 1925, at 2152-2176 (listing of lands and act confirming division of lands); *see also* An Act Relating to the Crown, Government, and Fort Lands, June 7, 1848 *reprinted in* VAN DYKE, CROWN LANDS, at Appendix 2.

[30] *Id.* *See* Estate of Kamehameha IV, 2 Haw. 715, 722-723 (1864). In 1865, the Crown lands were made inalienable. Act Rendering the Crown Lands Inalienable, January 5, 1865, *reprinted in* VAN DYKE, CROWN LANDS, Appendix 5.

the laws that followed drastically changed Hawaiian land tenure, the Government Lands and the Crown Lands were held for the benefit of all the Hawaiian people."[31] For Native Hawaiians, the Government and Crown lands "marked a continuation of the trust concept" that the sovereign held the lands "on behalf of the gods and for the benefit of all."[32]

At the time of annexation, the United States implicitly recognized the unique nature of the Government and Crown Lands. Although the Joint Resolution of Annexation ceded "the absolute fee and ownership of all public, Government, or Crown lands"[33] to the United States, federal public land laws were not applied to Hawai'i. Instead, Congress was to enact "special laws for [the] management and disposition"[34] of ceded lands. Moreover, the revenues from the ceded lands, with certain exceptions, were to be used "solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes."[35]

In 1900, Congress enacted an Organic Act[36] for the new territory that established a territorial government and confirmed the cession of lands to the United States. The Organic Act gave the territory the "possession, use, and control"[37] of the lands, but stipulated that proceeds from the lands were to be utilized for purposes "consistent with the Joint Resolution of Annexation."[38] Consequently, while the Republic had ceded the Crown and Government Lands to the United States, both the Joint Resolution of Annexation and the Organic Act recognized that these lands were impressed with a special trust.[39]

As a result of these actions by the United States—its participation in the overthrow and its annexation of Hawai'i—the United States was instrumental in

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[31] NATIVE HAWAIIAN RIGHTS HANDBOOK 26 (Melody Kapilialoha MacKenzie ed. 1991) [hereinafter "HANDBOOK"].

[32] *Id. See, e.g.*, NA KUA'AINA 31-39 (2007); VAN DYKE, CROWN LANDS, at 8-10, 54-58, 212-215.

[33] Joint Resolution.

[34] *Id.*

[35] *Id.* In an 1899 opinion, the U.S. Attorney General interpreted the Joint Resolution as creating a "special trust" for the benefit of Hawai'i's inhabitants. 22 Op. Att'y. Gen. 574 (1899).

[36] Act of April 30, 1900, An Act to Provide a Government for the Territory of Hawaii, ch. 339, 31 Stat. 141 (1900) [hereinafter "Organic Act"].

[37] *Id.* § 91. Section 95 of the 1894 Constitution of the Republic had declared the Crown Lands to be the property of the Hawaiian government and free of any trust. *Reprinted* in Liliuokalani v. U.S., 45 Ct. Cl. 418, 428 (1910). Similarly, section 99 of the Organic Act declared that the Crown Lands were "free and clear from any trust of or concerning the same, and from all claim of any nature whatsoever, upon the rents, issues, and profits thereof." Organic Act, § 99.

[38] *Id.* § 73(c).

[39] *See* Cheryl Miyahara, Note, *Hawaii's Ceded Lands*, 3 U. HAW. L. REV. 101, 115-118 (1981) [hereinafter "Miyahara, *Ceded Lands*"] for discussion of the unique nature of Hawai'i's lands and concluding that "the federal government had become in effect trustee of the lands ceded by Hawaii, holding absolute but 'naked' title for the benefit of the people of Hawaii."

depriving Native Hawaiians of both their sovereignty and their national lands.[40]

III. The course of Federal interaction and dealings with Native Hawaiians

A. The Territorial Period and the Hawaiian Homes Commission Act

During the territorial period, the condition of Native Hawaiians continued to deteriorate, following a downward spiral that began on first contact with Europeans. In 1920 territorial representatives sought assistance from Congress. Noting that Native Hawaiians had been "frozen out of their lands and driven into the cities," and that "Hawaiian people are dying," the representatives recommended allotting land to Native Hawaiians so that they could reestablish their traditional way of life.[41] The Secretary of the Interior echoed that recommendation, informing Congress that Native Hawaiians are "our wards . . . for whom in a sense we are trustees," that they "are falling off rapidly in numbers" and that "many of them are in poverty."[42]

In 1921, those recommendations led Congress to enact the Hawaiian Homes Commission Act (HHCA),[43] setting aside about 203,000 acres of ceded lands for a homesteading program to provide residences, farms, and pastoral lots for Native Hawaiians of fifty percent or more Hawaiian ancestry.[44] Congress found constitutional precedent for the HHCA in previous enactments granting Indians and others special privileges in using public lands.[45]

But passage of the HHCA was a compromise with large business interests. Prior to annexation, the Republic had established a general homesteading program on Government and Crown lands.[46] In 1910, Congress amended the Organic Act, directing the Territory to open these lands for general homesteading in a given area when twenty-five or more qualified homesteaders applied for land.[47] Since sugar plantation leases on about 26,000 acres of prime lands were due to expire during the 1920s and 1930s, Hawai'i's large plantation owners feared that homesteading would impact their successful plantations.[48]

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[40] Apology Resolution, at paras. 26, 29.

[41] H.R. Rep. No. 839, 66th Cong., 2d Sess. 4 (1920).

[42] *Id.*

[43] Hawaiian Homes Commission Act, 42 Stat. 108 (formerly codified as amended at 48 U.S.C. §§ 691-718 (1958)) (omitted from codification in 1959) (set out in full as amended at 1 HAW. REV. STAT. 261) [hereinafter "HHCA"].

[44] *Id.* § 208.

[45] H.R. Rep. No. 839, 66th Cong., 2d Sess. 11 (1920).

[46] The Land Act of 1895, CIVIL LAWS OF 1897, § 169; *see* ROBERT H. HOROWITZ ET AL., PUBLIC LAND POLICY IN HAWAII: AN HISTORICAL ANALYSIS 5-15 (Legislative Reference Bureau Report No. 5, 1969) (detailed analysis of the Act); VAN DYKE, CROWN LANDS, at 188-99 (discussing the 1895 Land Act).

[47] Act of May 27, 1910, ch. 258, § 5, 36 Stat. 444, amending the Organic Act.

[48] TOM DINNELL ET AL., THE HAWAIIAN HOMES PROGRAM: 1920-1963, LEGISLATIVE REFERENCE BUREAU REPORT NO. 1, at 6 (1964) [hereinafter "HOMES PROGRAM"].

As discussed above, during the same period, Hawaiian leaders became alarmed by the rapidly deteriorating conditions of the Hawaiian people.[49] Dispossessed from their traditional lands and seeking work, Hawaiians became members of the "floating population crowding into the congested tenement districts of the larger towns and cities" under conditions that many believed would "inevitably result in the extermination of the race."[50] As one report on the HHCA program put it, "[e]conomically depressed, internally disorganized and politically threatened, it was evident that the remnant of Hawaiians required assistance to stem their precipitous decline."[51]

These forces converged to promote passage of the HHCA. The homesteading approach to rehabilitation was "further reinforced . . . by the suggestion that dispossessed Hawaiians would be returning to the soil, going back to the cultivation of at least a portion of their ancestral lands . . . ."[52] Although originally opposed, ultimately the sugar growers supported the HHCA because it carefully restricted the lands for homesteading,[53] excluding cultivated sugar cane lands.[54] Changes to the Organic Act, enacted as part of the trade-off to gain support of the HHCA, eliminated the threat of losing fertile sugar producing lands.[55] Most homestead lands set aside for the HHCA lacked water and were of marginal agricultural value.[56] Moreover, Hawaiian leaders had originally proposed that all Native Hawaiians should be eligible for homesteading, but sugar interests maneuvered to have the blood quantum set at fifty percent, limiting the number of Hawaiians that could seek land.[57]

The HHCA was not the only acknowledgement of the special political and legal relationship between the United States and Native Hawaiians. In 1938, Congress again exercised its authority by granting Native Hawaiians exclusive fishing rights to portions of the Hawai'i National Park.[58]

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[49] *See generally* Davianna Pōmaika'i McGregor, *'Āina Ho'opulapula: Hawaiian Homesteading*, 24 HAWAIIAN J. HIST. 1 (1990) [hereinafter "McGregor"].

[50] S. CON. RES. 2, 10th Leg. of the Territory of Hawaii, 1919 HAW. SENATE JOURNAL 25-26.

[51] HOMES PROGRAM, at 2-3. For instance, the general crime rate for people of Hawaiian ancestry, as well as the rate of juvenile delinquency, was significantly higher than that of other groups. *Id.*

[52] *Id.* at 7.

[53] *See* McGregor, at 14-27.

[54] HHCA, § 203, 42 Stat. at 109-10 (1921). Also excluded were lands under a homestead lease, right of purchase lease, or certificate of occupation. *Id.*

[55] HANDBOOK, at 44-48.

[56] *See* ALLEN A. SPITZ, LAND ASPECTS OF THE HAWAIIAN HOMES PROGRAM, LEGISLATIVE REFERENCE BUREAU REPORT NO. 1B, at 19-26 (1964).

[57] H.R. REP. NO. 839, 66th Cong., 2nd Sess. (1920). See KEHAULANI KAUANUI, HAWAIIAN BLOOD: COLONIALISM AND THE POLITICS OF SOVEREIGNTY AND INDIGENEITY (2008) for background on the blood quantum restrictions of the HHCA. See generally M.M. Vause, The Hawaiian Homes Commission Act, History and Analysis (June 1962) (unpublished M.A. thesis, University of Hawai'i) (on file with Hamilton Library, University of Hawai'i) for discussion of factors leading to passage of the HHCA including the blood quantum limitations.

[58] Act of June 20, 1938, ch. 530, § 3(a), 52 Stat. 784.

B. Statehood and the Admission Act

In 1959, Hawai'i was admitted as a state of the union.[59] The Hawai'i Admission Act recognized the special status of Hawai'i's public lands and reflected the intent to return those lands to the new state. This approach differed significantly from the legal treatment of lands in other states, where the states received only a small portion of public lands. In contrast, the federal government transferred to Hawai'i title to most of the ceded lands held at the time of statehood.[60] The Hawai'i Admission Act also contains provisions specifically recognizing a trust for Native Hawaiians.

Section 5(f) of the Admission Act commands the State to hold ceded lands:

> [A]s a public trust for the support of the public schools and other public educational institutions, *for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended*, for the development of farm and home ownership on as widespread a basis as possible[,] for the making of public improvements, and for the provision of lands for public use.[61]

Moreover, the lands, as well as any proceeds and income from the lands or their disposition, must be managed or disposed of for one or more of the trust purposes, as provided by state law.[62]

Most relevant to S.65, the Hawaiian Homeownership Act, section 4 of the Admission Act requires, *as a compact with the United States*, that the Hawaiian Homes Commission Act be adopted in the State Constitution.[63] Indeed, the Hawai'i Supreme Court has analogized the trust duties the State acquired under Section 4 with those owed by the federal government to other Native Americans.[64] Section 4 also allows the State to

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[59] Admission Act of March 18, 1959, Pub. L. No. 86-3, § 5, 73 Stat. 4, 5-6 [hereinafter "Admission Act"].

[60] Miyahara, *Ceded Lands*, at 102. Certain lands—those that had been set aside pursuant to an act of congress, executive order, presidential proclamation, or gubernatorial proclamation—remained the property of the United States. Admission Act, § 5(c). These "retained" lands could be transferred to the new state within five years of Hawai'i's admission if the United States no longer needed them. *Id.* § 5(c). Congress subsequently passed an act allowing the transfer of these lands to the state at any time they are declared unnecessary to federal needs. Act of Dec. 23, 1963, Pub. L. No. 88-233, 77 Stat. 472.

[61] Admission Act, § 5(f) (emphasis added).

[62] Section 5(f) states: "Such lands, proceeds, and income shall be managed and disposed of for one or more of the foregoing purposes in such manner as the constitution and laws of said State may provide, and their use for any other object shall constitute a breach of trust for which suit may be brought by the United States."

[63] Admission Act, § 4, provides, in part: "As a compact with the United States relating to the management and disposition of Hawaiian home lands, the Hawaiian Homes Commission Act, . . . shall be adopted as a provision of the Constitution of said State . . . ."

[64] In *Akuna v. Dept. of Hawaiian Home Lands*, 64 Haw. 327, 339, 640 P.2d 1160, 1168-1169, the Hawai'i Supreme Court stated:

increase benefits to HHCA beneficiaries but the United States must approve any changes in the qualifications for beneficiaries.[65] Moreover, under the HHCA itself, Congress maintains the authority to alter, amend, or repeal the HHCA.[66] Consequently, although the State gained principal responsibility for administration of the HHCA in 1959, the federal government also retains significant authority.

C. The 1993 Apology Resolution

In November of 1993, the U.S. Congress passed, and President Clinton signed into law, Public Law 103-150, a joint resolution apologizing to the Native Hawaiian people for U.S. participation in the overthrow of the Hawaiian Kingdom.[67] This Apology Resolution was enacted as a public law and signed by the President and is a statute of the United States, similar to any other law enacted by Congress.[68]

The Apology Resolution acknowledges the "special relationship" that exists between the United States and the Native Hawaiian people. Congress confirmed in the Apology Resolution that Native Hawaiians are an "indigenous people," a key characterization that establishes that a "political" relationship exists between the Native Hawaiian people and the United States government.[69] In the Resolution, Congress found

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> In our opinion, the extent or nature of the trust obligations of the [State] toward beneficiaries . . . may be determined by examining well-settled principles enunciated by the federal courts regarding lands set aside by Congress in trust for the benefit of other native Americans, *i.e.*, American Indians, Eskimos, and Alaska natives. In *Pence v. Kleppe*, 529 F.2d 135 (9th Cir. 1976), the circuit court recognized that the word "Indian" is commonly used in the United States to mean "the aborigines of America." *Id.* at 138-39 n.5; *see also* 42 C.J.S. *Indians* § 1 (1944). Congress recently passed a religious freedom act which specifically included native Hawaiians among other American Indians. *See* American Indian Religious Freedom Act, . . . Essentially, we are dealing with relationships between the government and aboriginal people. Reason thus dictates that we draw the analogy between native Hawaiian homesteaders and other native Americans.

[65] Section 4 further states: "[A]ny amendment to increase the benefits to lessees of Hawaiian home lands may be made in the constitution, or in the manner required for State legislation, but the qualifications of lessees shall not be changed except with the consent of the United States." *Id.*

[66] HHCA, § 223, provides: "The Congress of the United States reserves the right to alter, amend, or repeal the provisions of this title."

[67] Apology Resolution.

[68] *See, e.g., Ann Arbor R. Co. v. United States*, 281 U.S. 658, 666 (1930) (treating a joint resolution as any other legislation enacted by Congress).

[69] The Apology Resolution states:

> Whereas *the indigenous Hawaiian people* never directly relinquished their claims to *their inherent sovereignty as a people* or over their national lands to the United States, either through their monarchy or through a plebiscite or referendum. . . .

Apology Resolution, at paras. 25, 29. After documenting in detail the wrongs done to the Hawaiian people at the time of the illegal overthrow—including "the deprivation of the rights of

that the Hawaiian people had "never directly relinquished their claims to their inherent sovereignty as a people," and listed among the wrongs perpetrated, "the deprivation of the rights of Native Hawaiians to self-determination."[70] The right to self-determination is the most basic of human rights under federal and international law, and efforts to facilitate the exercise of this right are mandated by fundamental human rights principles.

In the Apology Resolution, Congress also acknowledged that the Republic of Hawai'i ceded 1.8 million acres of Crown, Government and Public Lands of the Kingdom of Hawai'i without the consent of or compensation to the Native Hawaiian people or their sovereign government;[71] that the Native Hawaiian people never directly relinquished their claims to their inherent sovereignty over their national lands to the United States;[72] and that the overthrow was illegal.[73]

Congress expressed its commitment to acknowledge the ramifications of the overthrow of the Kingdom of Hawai'i, in order to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people, and urged the President of the United States to support reconciliation efforts between the United States and the Native Hawaiian people.[74]

The Apology Resolution's commitment to reconciliation, however, may have been undermined by the United States Supreme Court's 2009 decision in *Hawaii v. Office of Hawaiian Affairs*.[75] In that case, the Court determined that the Apology Resolution's findings had no "operative effect,"[76] and that its substantive provisions were merely conciliatory or precatory.[77] I believe, however, that it is important to point out that nowhere in its opinion does the Court question the veracity of the Apology Resolution's findings. Instead, the Court determined that those findings did not change substantive law since the Apology Resolution lacks an overt indication "that Congress intended to amend or repeal . . . rights and obligations" that the State acquired under the Admission Act.[78]

D. Other Federal Actions

1. The U.S. Department of Interior and U.S. Department of Justice *Mauka to Makai* Report

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Native Hawaiians to self-determination"—the Apology Resolution urges the President of the United States to "support reconciliation efforts between the United States and the Native Hawaiian people." *Id.* at § 1: Acknowledgment and Apology, (5).

[70] Apology Resolution, at para. 29, and § 1: Acknowledgment and Apology, (3).

[71] Apology Resolution, at para. 26.

[72] Apology Resolution, at para. 29.

[73] Apology Resolution, § 1: Acknowledgment and Apology, (1).

[74] Apology Resolution, § 1: Acknowledgment and Apology, (4)-(5).

[75] Hawaii v. Office of Hawaiian Affairs, 556 U.S. 163 (2009).

[76] *Id.* at 175.

[77] *Id.* at 173.

[78] *Id.* at 175-6.

In October 1999, the U.S. Department of the Interior and the Department of Justice announced that their representatives would be conducting meetings in Hawai'i to further reconciliation efforts as called for in the Apology Resolution. Their purpose was to investigate progress on the reconciliation called for in the Apology Resolution and to solicit input from the Hawaiian community so that their concerns could be included in a forthcoming report to Congress. In late 1999, the Justice and Interior representatives consulted the Native Hawaiian community on Kaua'i, Maui, Moloka'i, Lana'i, and in Hilo and Kona on Hawai'i Island. On O'ahu alone, more than 300 people attended the meetings. Hundreds testified, and 265 submitted written statements. These statements touched on topics ranging from sovereignty to community and economic development, and from health and education to housing.

In August 2000, the Departments jointly issued a detailed report, entitled *From Mauka to Makai: The River of Justice Must Flow Freely*,[79] on the reconciliation process based on the community input, thus recommitting the United States to a reconciliation process. The *Mauka to Makai* report encouraged acts of reconciliation to heal the wounds of Native Hawaiians. According to the report:

> Reconciliation is an evolving and continuing process to address the political status and rights of the Native Hawaiian people, based on dialogue among the Federal and State Governments, Native Hawaiians, and Hawai'i's Congressional delegation, and further action by the United States Congress. This document contains recommendations with respect to the continuation of the reconciliation process and should be read as merely the next step, as the United States and Native Hawaiians move forward in further dialogue.[80]

In acknowledging the 1993 Apology Resolution and formally recommitting to reconciliation, the Departments cast their recommendations in terms of justice and moral responsibility. The report's first and most significant recommendation related to federal recognition. The report stated, "To safeguard and enhance Native Hawaiian self-determination over their lands, cultural resources, and internal affairs, the Departments believe Congress should enact further legislation to clarify Native Hawaiians' political status and to create a framework for recognizing a government-to-government relationship with a representative Native Hawaiian governing body."[81] The four other recommendations were: establish an office in Interior to address Native Hawaiian issues; assign a representative from the Department of Justice Office of Tribal Justice to maintain dialogue with Native Hawaiians on pertinent issues; create a Native Hawaiian Advisory Commission to consult with agencies under Interior that manage land in Hawai'i; and continue to address past wrongs to promote the welfare of Native Hawaiians.[82]

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[79] Department of Interior and Department of Justice, *Mauka to Makai: The River of Justice Must Flow Freely* (October 23, 2000).

[80] *Id.* at ii.

[81] *Id.* at 3-4.

[82] *Id.* at 4.

2. The Office of Native Hawaiian Relations

At least one of the *Mauka to Makai* recommendations has been implemented. In a 2004 appropriation bill, Congress established the Office of Native Hawaiian Relations. The Office, housed in the Office of the Secretary of the Interior, is charged with "continu[ing] the process of reconciliation with the Native Hawaiian people.[83] The purpose of the Office is to effectuate and implement the "special legal relationship" between the Native Hawaiian people and the United States; continue the process of reconciliation with the Native Hawaiian people; and fully integrate the principle and practice of meaningful, regular, and appropriate consultation with the Native Hawaiian people by assuring timely notification of and prior consultation with the Native Hawaiian people before any Federal agency takes any actions that may have the potential to significantly affect Native Hawaiian resources, rights, or lands.[84] The Office of Native Hawaiian Relations also carries out the Secretary's responsibilities as set forth in the Hawaiian Home Lands Recovery Act.[85]

3. Modern Legislation

Congress has also included Native Hawaiians in laws enacted to benefit other native peoples in the United States, such as the National Historic Preservation Act, which provides protection to properties with religious and cultural importance to Native American Indian tribes and Native Hawaiians; the Native American Graves Protection and Repatriation Act, which protects Native American Indian, Alaska Native, and Native Hawaiian ancestral remains and sacred objects; the American Indian Religious Freedom Act, which expresses U.S. policy to protect native religions; and the Native American Languages Act, supporting the preservation of native languages.[86] In addition, Congress has enacted specific laws relating solely to Native Hawaiians pursuant to its authority under the Indian Commerce Clause. These include the Native Hawaiian Education Act, which establishes programs to facilitate the education of Native Hawaiians and the Native Hawaiian Health Care Improvement Act, which seeks to improve the health status of Native Hawaiians.[87] Indeed, the findings in both the Native Hawaiian Education Act and the Native Hawaiian Health Care Improvement Act often refer to the "trust relationship" between the United States and the Native Hawaiian people.

Thus, as set out above, the entire course of dealings between the United States and the Native Hawaiian community—over an extended period—demonstrates that the United States has interacted with Native Hawaiians based on the special political and legal relationship and responsibility it holds toward its native peoples.

IV. The U.N. Declaration on the Rights of Indigenous Peoples

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[83] Consolidated Appropriations Act of 2004, Pub. L No. 108-199, 118 Stat. 3, div. H, sec. 148 (2004).

[84] *Id.*

[85] Pub. L No. 104-42, sec. 206 (1995).

[86] NHPA, 42 U.S.C. § 470 et seq.; NAGPRA, 25 U.S.C. 3001 et seq; AIRFA, 42 U.S.C. § 1996; NALA, 25 U.S.C. § 2904, et seq.; AIRFA, 25 U.S.C. § 2904.

[87] NHEA, 20 U.S.C. § 7511, et seq.; NHHCIA, 42 U.S.C. § 11701, et seq.

On September 13, 2007, after years of debate and consideration, the U.N. General Assembly adopted the Declaration on the Rights of Indigenous Peoples,[88] extending the right of self-determination to Indigenous Peoples. The United States did not vote to approve the Declaration, but in December 2010, President Barack Obama announced that after extensive review and input from indigenous leaders, the United States would support the Declaration.

Among other things, the Declaration states that Indigenous Peoples have the right of self-determination and self-governance, and the right to maintain their unique culture and institutions.

> Article 3
> Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.[89]
>
> Article 4
> Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.
>
> Article 5
> Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

The Declaration also recognizes a wide range of basic human rights and fundamental freedoms of Indigenous Peoples. Among these are an inalienable collective right to the ownership, use and control of lands, territories and other natural resources, and the right to maintain and develop political, religious, cultural and educational institutions along with the protection of cultural and intellectual property.[90] Although the Declaration is non-binding, it is nevertheless a strong statement of agreement among the nation states and evidence of international customary law.[91]

V. Conclusion

Congress has identified Native Hawaiians as a distinct indigenous group within

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[88] United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295, *available at* http://social.un.org/index/IndigenousPeoples/DeclarationontheRightsofIndigenousPeoples.aspx. Only four nation states—the United States, Canada, New Zealand, and Australia—voted against the Declaration, while eleven others abstained. Since then, all four of the major nation states have changed their positions and now support the Declaration.

[89] *Id.*

[90] *See*, e.g. Articles 9, 10, 12, and 20 of the Declaration.

[91] U.N. declarations and resolutions illuminate the position of the international community on any given subject matter, and are frequently invoked as evidence of customary international law. IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 15 (7th ed. 2008).

the scope of its Indian affairs power, and–beginning with the Hawaiian Homes Commission Act in 1921 and continuing until today–has enacted dozens of statutes on behalf of Native Hawaiians pursuant to its recognized special legal and political relationship with Native Hawaiians. Congress' determination that Native Hawaiians are a distinct indigenous group for whom it may enact special legislation is rational and logical. Native Hawaiians have a cultural, historic, and land-based link to the indigenous people who exercised sovereignty over the Hawaiian Islands, and as recognized in the Apology Resolution, Native Hawaiians have never relinquished their claims to sovereignty or over their national lands.

Moreover, Congress has concluded that it has a special obligation to Native Hawaiians precisely because the United States bears responsibility for the destruction of the Native Hawaiian government and their loss of national lands. Congress has repeatedly stated that it does not extend services to Native Hawaiians because of their race, but because of their unique status as the indigenous people of a once-sovereign nation with whom the United States has established a special political and legal relationship.

The entire course of dealings between the Federal government and the Native Hawaiian people has evidenced an acknowledgment of this special political and legal relationship from both the Congressional and Executive branches. This course of dealing extends from as early as 1921 with the passage of the Hawaiian Homes Commission Act up until the present day with the implementation of the Native Hawaiian Education and Native Hawaiian Health Care Improvement Acts as well as the establishment of the Office of Native Hawaiian Relations within the Department of Interior.

Finally, the U.N. Declaration on the Rights of Indigenous Peoples provides support for the continued recognition and development of the special political and legal relationship between the United States and the Native Hawaiian community.

Again, mahalo nunui for the opportunity to present this testimony!

The CHAIRMAN. Thank you very much, Melody Mackenzie, for your testimony. Thank you for highlighting all the points you did about Hawaii's history, and the relationship we have had thus far with the United States and how important it is that we achieve that government relationship, and not only politically but legally as well. So mahalo nui loa.

Now I would like to call on Brickwood Galuteria, Senator for the State of Hawaii. Please proceed with your testimony.

STATEMENT OF HON. BRICKWOOD GALUTERIA, MAJORITY LEADER, HAWAII STATE SENATE

Mr. GALUTERIA. Aloha, Mr. Chairman, welcome home.

The CHAIRMAN. Good to be home.

Mr. GALUTERIA. We love that you come home. And thank you for providing me with the opportunity to testify before you today in full support of S. 65 Hawaiian Homeownership Opportunity Act of 2011. I currently serve as the Majority Leader for the Hawaii State Senate. I Chair the Hawaii State Senate Committee on Hawaiian Affairs, and as a member of the Hawaii State Legislature's Native Hawaiian Caucus.

So I bring you news from the state legislature. I'd also like to acknowledge our former Senate President, who now serves in Wash-

ington with you, Congresswoman Hanabusa, and greetings from your former colleagues as well.

Ms. HANABUSA. Thank you.

The CHAIRMAN. Please pass my aloha to the group as well.

Mr. GALUTERIA. I certainly will today when I head back. In fact, we head into session, so I apologize, but I'll probably have to leave after this testimony, Mr. Chair. The Hawaii State Senate Committee on Hawaiian Affairs has oversight over the Department of Hawaiian Home Lands and its administration of the federal land trust created by the Hawaiian Homes Commission Act of 1920. Congress, through its enactment of over 150 statutes that protect the rights of and address the conditions of Native Hawaiians, has long recognized Native Hawaiian people as an indigenous people with whom it has a federal trust relationship, as Melody indicated.

The Hawaiian Homes Commission Act is a clear example of federal policies towards Native peoples that have consistently been applied to Native Hawaiians, not always at exactly the same time, but often closely afterwards.

The prevailing federal policies at the turn of the century focused on the assimilation and allotment. The Dawes Act and Burke Act focused on providing eligible Indians with allotments of lands for residential, ranching and agricultural purposes.

The general concept behind this policy was to return Native people to the land. The Hawaiian Homes Commission Act was modeled after these Indian General Allotment Acts as it sought to "rehabilitate" the Native Hawaiian people by placing them back on their ancestral lands.

Learning from tragic circumstances that resulted in American Indians losing some of their lands, the Hawaiian Homes Commission Act created a federal land trust that provided for 99-year leases to qualified Native Hawaiians, thereby ensuring longevity of the trust lands to benefit the Native Hawaiian people.

In 1959 when the State of Hawaii entered into Statehood, prevailing federal policies towards Natives were to delegate authorities over to state governments. As a condition of Statehood, therefore, the State of Hawaii agreed to administer the Hawaiian Home Lands trust. It provides especially that: "As a compact with the United States relating to the management and disposition of the Hawaiian home lands, the Hawaiian Homes Commission Act, as amended, shall be adopted as a provision of the Constitution of said State," and that's what we enjoy today.

While the State of Hawaii has administrative and rulemaking authority, the Federal Government retains oversight to ensure that the original intent of the Act is maintained.

Now, Mr. Chairman, the Native Hawaiian people, despite the loss of their government, our government, and following the overthrow of the Kingdom of Hawaii and subsequent annexation to the United States, we continue as a distinct Native community.

While the Native Hawaiian people lack a formal government-to-government relationship with the United States, we are repeatedly recognized by the United States as an indigenous people with whom the United States has a trust relationship.

The State of Hawaii established the Department of Hawaiian Home Lands in 1961 to fulfill the State's responsibilities in admin-

istering the federal land trust. As indicated, the Hawaiian Home Lands is governed by a nine-member Commission appointed by Hawaii's Governor. And the Commission Chairman also serves as the Director of the state agency and is a member of the Governor's cabinet.

Now, in addition to this, Mr. Chairman, the Hawaiian Homes Commission Act beneficiaries also govern themselves through the existence of beneficiary organizations called homestead associations. These organizations, which have existed as long as homestead communities, have representative leadership through democratically elected processes for each homestead area.

And they're important partners. They're important partners with the State of Hawaii and important partners with the Federal Government. They know their communities, they know their lands, and are best able to engage and communicate with state and federal policymakers to address priorities.

S. 65, the Hawaiian Homeownership Opportunity Act reauthorizes financial tools that provide much needed access to capital for Hawaiian Homes Commission Act and beneficiaries. Whether already residing on home lands, or still on the waiting list, access to capital remains a barrier for many, many beneficiaries. We, the state, fully support any and all tools that help us to meet the mandate of the Hawaiian Homes Commission Act with the knowledge that the State's commitment and obligation ends in 2014.

And measures like S. 65 is critical to the DHHL funding mechanism. Mr. Chairman, the State of Hawaii has embraced its role in managing the Hawaiian Home Lands trust, and continues to support efforts to enhance self-determination and self-governance.

As an example, as Melody indicated, in 2011 I joined my colleagues in introducing and enacting legislation, commonly referred to as Act 195 to establish Native Hawaiian Roll Commission that recognizes the Native Hawaiian people as the only indigenous, aboriginal, maoli people of Hawaii—excuse me, Mr. Chairman—that expresses the State's support for the continuing development of the reorganization of the Native Hawaiian governing entity, in part, for the establishment of a federally recognized government-to-government relationship with the United States.

The enactment of Act 195 was yet another example of Hawaii's ongoing desire to recognize the unique contributions and traditions of the Native Hawaiian people. We, as a state legislature, find every opportunity, where appropriate, to bring Native Hawaii practices into public policy.

We also designed Act 195, Mr. Chairman, to complement your efforts in Congress and to present the Federal Government clear evidence of the State of Hawaii's recognition of and continued support for self-governance and self-determination of the Native Hawaiian people.

Furthermore, to bring us to a clear call for action towards creating a governing entity, former Governor John Waihee, Hawaii's first Native Hawaiian Governor, has been appointed to lead a five-member commission charged with preparing and maintaining a roll of qualified Hawaiians that would work toward the reorganization of a Native government.

The commission is to prepare and maintain a roll of qualified Hawaiians who meet specific criteria. Once the roll is finished, the commission would be required to publish the registry to start the process of holding a convention to organize Native Hawaiian governing entity. At this point it would be incredibly premature, Mr. Chairman, to say what that model would be, what that model would look like, but now that the dye has been cast, I will see that we will arrive there sooner than later.

Mahalo, Mr. Chairman, for your unfailing leadership and representation of our Native Hawaiian people at the highest echelons of government. You've served as the role model for so many of us who have followed in your noble footsteps in elected service. Your unwavering ability to demonstrate the Spirit of Aloha and to represent Hawaii's values in your actions and words even in the most trying of circumstances, has shown us how to successfully "walk in both world's", both native and western.

Your accomplishments in representing all people of Hawaii are staggering, but we particularly appreciate your success in ensuring the Federal Government's fulfillment of its trust responsibilities to the Native Hawaiian.

The Apology Resolution, as an example, will forever stand as one of the most poignant Acts by the United States in apologizing for its role in the overthrow, and begins the process of reconciliation. And we thank you for your role in that.

And, finally, as I mentioned earlier in this testimony, I maintain full support of S. 65, the Hawaiian Homeownership Opportunity Act of 2011, along with any and all initiatives to meet the mandate of the Hawaiian Homes Commission Act.

So with that, I say mahalo to the Committee of one today, and mahalo to you, Mr. Chairman, for this opportunity to testify. Aloha.

[The prepared statement of Mr. Galuteria follows:]

PREPARED STATEMENT OF HON. BRICKWOOD GALUTERIA, MAJORITY LEADER, HAWAII STATE SENATE

Aloha Mr. Chairman, Senator Inouye, and Distinguished Members of the Senate Committee on Indian Affairs. Thank you for the providing me with the opportunity to testify before you today on S. 65, the Hawaiian Homeownership Opportunity Act of 2011.

I currently serve as the Majority Leader for the Hawaii State Senate and as the Chair of the Hawaii State Senate Committee on Hawaiian Affairs. I represent the districts of Iwilei, Chinatown Downtown, Kaka'ako, Ala Moana and Waikiki and am a member of the Hawaii State Legislature's Hawaiian Caucus. I have spent my life actively involved in efforts to honor our kupuna, by preserving and perpetuating the language, culture, and traditions of the Native Hawaiian people.

The Hawaii State Senate Committee on Hawaiian Affairs has oversight over the Department of Hawaiian Home Lands (DHHL) and its administration of the federal land trust created by the Hawaiian Homes Commission Act of 1920 (HHCA). Congress, through its enactment of over 150 statutes that protect the rights of and address the conditions of Native Hawaiians, has long recognized the Native Hawaiian people as an indigenous people with whom it has a federal trust relationship. Federal policies towards native peoples have consistently been applied to Native Hawaiians—not always at the exact same time, but often closely afterwards.

The Hawaiian Homes Commission Act is a clear example. The prevailing federal policies at the turn of the century focused on assimilation and allotment. The Dawes Act and Burke Act focused on providing eligible Indians with allotments of lands for residential, ranching, and agricultural purposes. The general concept behind this policy was to return native people to the land. The Hawaiian Homes Commission Act was modeled after these Indian General Allotment Acts as it sought to "rehabilitate" the Native Hawaiian people by placing them back on their ancestral lands.

Learning from tragic circumstances that resulted in American Indians losing some of their lands, the HHCA created a federal land trust that provided for 99-year leases to qualified Native Hawaiians, thereby ensuring the longevity of the trust lands to benefit the Native Hawaiian people.

In 1959, when Hawaii entered into statehood, prevailing federal policies towards natives were to delegate authorities over natives to state governments. As a condition of Statehood, therefore, the State of Hawaii agreed to administer the Hawaiian Home Lands trust. Section 4 of the Admissions Act (P.L. 86–3, 73 Stat 4) specifically provides that "As a compact with the United States relating to the management and disposition of the Hawaiian home lands, the Hawaiian Homes Commission Act, 1920, as amended, shall be adopted as a provision of the Constitution of said State . . . subject to amendment or repeal only with the consent of the United States . . .". While the State of Hawaii has administrative and rulemaking authority, the federal government retains oversight to ensure that the original intent of the HHCA is maintained.

The Native Hawaiian people, despite the loss of their government following the overthrow of the Kingdom of Hawaii and subsequent annexation to the United States, have continued to exist as a distinct native community. While the Native Hawaiian people lack a formalized government-to-government relationship with the United States, they have been repeatedly recognized by the United States as an indigenous people with whom the United States has a trust relationship. The State of Hawaii has embraced its role in managing the Hawaiian Home Lands trust, and continues to support efforts to enhance the self-determination and self-governance of the Native Hawaiian people.

In 2011, for example, I joined my colleagues in introducing and enacting legislation, commonly referred to as Act 195, to establish a Native Hawaiian Roll Commission. Act 195 recognizes the Native Hawaiian people as the only indigenous, aboriginal, maoli population of Hawaii and expresses the State's support for the continuing development of the reorganization of the Native Hawaiian governing entity for a federally recognized government to government relationship with the United States. The legislation was unanimously passed by the State's House of Representatives and was approved by 23 of 25 votes in the Hawaii State Senate. Act 195 serves as clear evidence of the State of Hawaii's recognition of and continued support for self-governance and self-determination of the Native Hawaiian people.

The State of Hawaii established the Department of Hawaiian Home Lands in 1961 to fulfill the State's responsibilities in administering the federal land trust. DHHL is governed by a nine-member Commission appointed by Hawaii's Governor. The Commission Chairman also serves as the Director of the state agency and is a member of the Governor's cabinet. Beneficiaries of the HHCA govern themselves through the existence of beneficiary organizations called homestead associations. These organizations, which have existed as long as homestead communities, have representative leadership through democratically elected processes for each homestead area. Homestead associations are important partners that help the State of Hawaii to fulfill its responsibilities under the HHCA because they know their communities and lands, and are best able to engage their communities and to communicate with state and federal policymakers to address issues of priority.

S. 65, the Hawaiian Homeownership Opportunity Act of 2011, reauthorizes financial tools that provide much-needed access to capital for HHCA beneficiaries. Whether already residing on the Hawaiian Homes Land Trust or still on the waiting list, access to capital remains a barrier for many HHCA beneficiaries. We fully support any and all tools that help us to meet the mandate of the Hawaiian Homes Commission Act.

Thank you, Mr. Chairman, for your unfailing leadership and representation of our Native Hawaiian people at the highest echelons of government. You have served as the role model for so many of us who follow your noble footsteps in elected office. Your unwavering ability to demonstrate the Spirit of Aloha and to represent Hawaii's values in your actions and words even in the most trying of circumstances has shown us how to successfully "walk in both worlds"—both native and western. Your accomplishments in representing all people of Hawaii are staggering, but we particularly appreciate your success in ensuring the Federal Government's fulfillment of its trust responsibilities to the Native Hawaiian people. The Apology Resolution, P.L. 103–150, will forever stand as one of the most poignant Acts by the United States in apologizing for its role in the overthrow of the Kingdom of Hawaii and committing to a process of reconciliation with the Native Hawaiian people—a process that is ongoing and provides the path forward for self-governance and self-determination by the Native Hawaiian people.

The CHAIRMAN. Aloha, thank you for your mana'o, and that of your colleagues in the U.S. Senate as well as the Legislature. So mahalo nui for that.

Now, I would like to call on Mr. Wurdeman. Please proceed with your testimony.

STATEMENT OF RICHARD NAIWIEHA WURDEMAN, PRESIDENT, NATIVE HAWAIIAN BAR ASSOCIATION

Mr. WURDEMAN. Aloha, and thank you so much for this opportunity to allow me and the Native Hawaiian Bar Association to testify on such an important piece of legislature.

I would like to start by concurring with Senator Galuteria's comments about you and your service in Congress and the United States Senate.

Senator Akaka, you truly have been a role model for the Native Hawaiian people. It is such an honor just to be here today, to be sharing what little insight I have to add. In all your years of service, it is just so greatly and deeply appreciated what you have done for the Native Hawaiian people and for the community as a whole. And I just wanted to thank you for all those years of service and commitment. And your example of showing what real aloha is and always being yourself in all the challenges that you faced up in the Senate and the U.S. House before that. And you never steered away from being and showing people what the Hawaiian people are about. And I just wanted to again thank you for all of your services and your role, Senator.

The CHAIRMAN. Mahalo nui loa.

Mr. WURDEMAN. Senator, you started off this morning with a very good overview of the history of the trust obligations that the United States does have. And the Hawaiian Homes Commission Act of 1920, of course, was the first congressional act that clearly defined that trust obligation. There was absolutely no if, ands, or buts about it. That trust obligation was established. It was acknowledged, subsequently acknowledged, and recognized by our federal courts over the years.

And you also touched, and Professor Mackenzie also talked about the Admission Act later, and the compact that the United States entered into with the Admission Act with the State of Hawaii, really a condition of Statehood that this Hawaiian Homes program continue and be administered properly and adequately.

And so with these legal responsibilities, it's really sad, but also a great testament to you, Mr. Chairman, that you're addressing these issues through this legislation, that after over 90 years of this program, we still have many of our Native Hawaiian people, especially those who are in the lower income brackets, unable to receive awards because they're not able to qualify.

And this current legislation is really, as Congresswoman Hanabusa stated earlier, so very important to close that gap and to address those problems. And we thank you for calling this bill for hearing, for pushing it through the Senate, and it is long overdue, and something that certainly will continue the process of closing these gaps and giving the beneficiaries of the Hawaiian homestead Commission Act, especially those of the lower income brackets, an opportunity to have a home; to have their keiki be in a safe

environment; to be able to live as a regular functioning family; and to go to school and not have to worry about all the other challenges that come without having a stable home life.

There's one other point that I would like to make, and it was touched briefly upon by Senator Galuteria as well, the Apology Resolution of 1993, that I know you were very significant in pushing through the U.S. Congress. And this is another very necessary step in that whole reconciliation process. I think the legal obligations are very clear. It's the need now to continue the reconciliation process, and this bill certainly is another important step in doing that.

And so the Native Hawaiian Bar Association and myself, we strongly support this measure, and I thank you again for this opportunity to present testimony, Senator.

[The prepared statement of Mr. Wurdeman follows:]

PREPARED STATEMENT OF RICHARD NAIWIEHA WURDEMAN, PRESIDENT, NATIVE HAWAIIAN BAR ASSOCIATION

Chairman Akaka, Vice Chairman Barrasso, and distinguished members of the U.S. Senate Committee on Indian Affairs:

On behalf of the Native Hawaiian Bar Association, I would like to thank this Committee for the invitation to present testimony on S. 65, The Hawaiian Homeownership Opportunity Act of 2011.

The Native Hawaiian Bar Association is an association of lawyers, judges and other legal professionals of Native Hawaiian ancestry which seeks to promote unity, cooperation and the exchange of ideas among its members. Formed in 1992, NHBA strives for justice and effective legal representation for all people of Native Hawaiian ancestry. NHBA represents attorneys whose practice range from solo practice to large firms, corporations, legal services organizations, nonprofit organizations and governmental agencies. NHBA has trained over 30 practitioners of traditional Hawaiian peacemaking through its Ho'oponopono Project. These haku are active today in our community. NHBA has also convened symposia and meetings on the issues affecting our Hawaiian community today: sovereignty, access and gathering protection, water usages guaranteed under State law, Hawaiian Home Lands and ceded lands breach of trust claims.

As this Committee is aware, the Native American Housing and Assistance and Self Determination Act of 1996 (NAHASDA) reorganized the system of housing assistance provided to Native Americans through the Department of Housing and Urban Development by eliminating several separate programs of assistance and replacing them with a block grant program. The legislation authorized for Indian tribes two programs—the Indian Housing Block Grant program and Title VI Loan Guarantees which provided financing guarantees to Indian tribes for private market loans to develop affordable housing. Similar opportunities were extended to Native Hawaiians when NAHASDA was amended in 2000. Loan guarantees for Native Hawaiian Housing was added to provide access to sources of private financing on Hawaiian Home Lands. The Native Hawaiian Housing Block Grant Program has allowed for numerous families to receive home buyer education and has allowed for the development of affordable homes for low-income native Hawaiian families who are beneficiaries of the Hawaiian Homes Commission Act of 1920. A number of success stories can be told by the Department of Hawaiian Homelands and various other organizations which are currently serving qualifying native Hawaiian families through the programs that were extended to Native Hawaiians with the amendments to NAHASDA in 2000. However, far too many Native Hawaiian families still remain on the Hawaiian Homes waitlist and still far too many need to be reached. The reauthorization of NAHASDA funding to Native Hawaiians and the extension of programs that will occur with passage of this Act are very important and the trust obligation of the United States Government to the Native Hawaiian people, including the trust obligation to those direct recipients or those intended direct recipients under this Act, is well established.

Under the treaty making power of the United States, Congress had exercised its constitutional authority to confirm treaties between the United States and the Kingdom of Hawaii, and from 1826 until 1893, the United States had entered into treaties and conventions with the Kingdom of Hawaii to govern commerce and naviga-

tion in 1826, 1842, 1849, 1875, and 1887; and the United States had recognized the sovereignty of the Kingdom of Hawaii and had accorded full diplomatic recognition to the Kingdom of Hawaii.

In 1993, the United States Congress "on the occasion of the 100th anniversary of the illegal overthrow of the Kingdom of Hawaii on January 17, 1893," extended an apology on behalf of the United States to the Native Hawaiian people for the United States' role in the overthrow of the Kingdom of Hawaii. See Public Law 103–150 (107 Stat. 1510). The Apology Resolution acknowledged that the overthrow of the Kingdom occurred with the active participation of agents and citizens of the United States and, further, Congress "expresse[d] its commitment to acknowledge the ramifications of the overthrow of the Kingdom of Hawaii, in order to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people . . ." *Id.* Congress also acknowledged in the Apology Resolution that "the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States, either through their monarchy or through a plebiscite or referendum." *Id.*

Following the Newlands Resolution in 1898 (which was passed after the failure of the Treaty of Annexation in 1897 and the protest of Queen Lili'uokalani) and the Organic Act of 1900 and, by 1919, the Native Hawaiian population had declined tremendously (from an estimated 1,000,000 in 1778), and in recognition of this severe decline in the population, Congress enacted the Hawaiian Homes Commission Act of 1920 (42 Stat. 108), which designated approximately 203,500 acres of public lands for the welfare and rehabilitation of native Hawaiians. *See* Native Hawaiian Education Act; *Keaukaha-Panaewa Community Association v. Hawaiian Homes Commission*, 588 F.2d 1216 (1978). Congress enacted the Hawaiian Homes Commission Act which mandated that certain lands, designated the Hawaiian home lands, be held in trust for the benefit of native Hawaiians. *Keaukaha-Panaewa Community Association v. Hawaiian Homes Commission*, 739 F.2d 1467 (1984). Under the Admission Act in 1959, Section 4 of that Act required that the provisions of the Commission Act be incorporated into the Constitution of the State of Hawaii. Id. at 1469. This incorporation was described "as a compact with the United States." *Id.* While the responsibility for the administration of the Hawaiian Home Lands was transferred to the State of Hawaii, the United States retained the exclusive right to consent to any actions affecting the lands included in the trust and any amendments to the Hawaiian Homes Commission Act of 1920 enacted by the legislature of the State of Hawaii affecting the beneficiaries under the Act.

Also, under the Admission Act in 1959, public lands that were transferred from the United States to the State of Hawaii were to be held as a public trust for five purposes, one of which was "for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended."

In addition to the special trust relationship between the United States and the Native Hawaiian people being recognized and reaffirmed through the Hawaiian Homes Commission Act of 1920 and then the Admission Act, other Acts of Congress have also recognized and reaffirmed this special relationship through the passage of the Native Hawaiian Education Act, and with the inclusion of Native Hawaiians in such legislation as the American Indian Religious Freedom Act, the National Museum of the American Indian Act, the Native American Graves Protection and Repatriation Act, and other legislation.

The Native Hawaiian people continue to maintain their separate identity as a distinct native community through cultural, social, and political institutions, and to express their rights as native people to self-determination, self-governance, and economic self-sufficiency. The Native Hawaiian people also, once again, never relinquished their claims to their inherent sovereignty as a people or over their national lands and to their claims of their national lands. Although the passage of this Act is certainly just one step in the reconciliation process and is far from adequately addressing what the United States did to and what it legally and politically owes to the Native Hawaiian people, the loan guarantees and the Native Hawaiian Housing Block Grant Program does, as our esteemed Congresswoman from Hawaii, Representative Colleen Hanabusa, stated last year during the introduction of H.R. 2648, "help [to] fulfill a trust obligation this Congress created in 1920 that recognized it was necessary to return Native Hawaiians to the land in order to preserve their culture, their tradition and values."

Chairman Akaka and Honorable Members of this Committee, I respectfully urge your passage of the Hawaiian Homeownership Opportunity Act of 2011. Thank you very much for this opportunity to testify on this important matter before this Committee.

Mahalo nui loa.

The CHAIRMAN. Mahalo nui loa for your testimony, and all of your support. Please pass the aloha to the lawyers.

I would like to, before I ask my questions, ask Congresswoman Hanabusa, will you please join me on the dais, and ask you for your comments here, and also you may ask any questions you have of this panel.

Melody, mahalo nui loa for all you've been for Hawaii, and what you've contributed already, and in helping to shape the future of Hawaii.

Your testimony provides a comprehensive review of the federal trust responsibility, and relationship with the Native Hawaiian people of the United States.

Generally, has the United States' treatment of the Native Hawaiian people been consistent with prevailing federal Indian policy in your view? Is there more the United States must do in order to ensure parity, parity in adaptation of federal policy to its Native people?

Ms. MACKENZIE. Thank you, Senator, for that question.

I alluded to that in my comments, but Native Hawaiians, indeed are, I think, the only native group in the United States that has a long history of basically federal recognition, but does not have a clearly acknowledged government-to-government relationship with the U.S. government. And I think that is the crucial factor that's missing in our relationship with the United States, and certainly one that you yourself have sought to remedy in the past.

To me that is a crucial point, something that we, as indeed Senator Galuteria indicated, that we are working towards.

And, you know, it's been argued very often that Native Hawaiians are federally recognized. The only part that is missing is that government-to-government relationship specifically acknowledged by the Federal Government.

The CHAIRMAN. Mahalo for your mana'o on that.

Naiwieha, in your testimony, you talk about S. 65 and one part of fulfilling the federal trust obligation to the Native Hawaiian people.

Can you describe what other concrete things the United States can do to better fulfill its trust obligation to the Native Hawaiian people?

Mr. WURDEMAN. Well, that's a very open-ended question, Senator, and the easy answer to that is to have the United States return all the lands back to the Hawaiian people.

But Congress has, in many different acts, included Native Hawaiians, whether it's through the Graves Repatriation Act, through the Native Hawaiian Education Council, all of these different measures over the years to address its obligations and its legal responsibilities to the Native Hawaiian people.

Certainly allowing funding for the Hawaiian Homes program is, as I stated earlier, a very significant step, and it is very encouraging to know that our Hawaiian Homes Department has very capable leadership and will take to heart and will work endless hours. I know, I'm very confident, in making these goals happen on Hawaiian home lands and making these opportunities available for the beneficiaries that this legislation intends to address.

The CHAIRMAN. Thank you very much. We'll keep in contact. I know you will you have perceptions and ideas and mana'o in the future, what we're trying to do in Congress of the United States.

To both of you, do you have any additional comments, additional comments or information you believe is important for the Committee to know in contemplating this bill or the federal relationship with the Native Hawaiian people?

Ms. MACKENZIE. Senator, I included in my written testimony, but I think it might be appropriate to talk a little bit about the Apology Resolution. And as you know, there was a recent U.S. Supreme Court case that interpreted and looked at the Apology Resolution. That was in relationship to the ceded lands.

I wanted to point out that, although in that particular case the U.S. Supreme Court did not think it was appropriate to rely upon the Apology Resolution in order to uphold the moratorium on the sale of the ceded lands, that the court in no way dismissed the findings or overturned the findings in the Apology Resolution.

So from a legal perspective, those very strong findings about the role of the United States about the relationship between the Native Hawaiian people and United States, about the loss of sovereignty and control over national lands, and the claims of Native Hawaiians, those findings are still very, very valid, and I just wanted to just make that clear in the record.

The CHAIRMAN. Thank you.

Mr. WURDEMAN. I concur with Professor Mackenzie's comments about the Supreme Court case. The issue really that had gone up to the Supreme Court was whether, as far as the Apology Resolution was concerned, was whether the 1993 legislation created a cloud on title. And, you know, from the Native Hawaiian's perspective, that cloud to title always existed. It wasn't this act of legislation that did so. But that is really, with respect to the Apology Resolution, the court said that that's not what the Apology Resolution did. And as Professor Mackenzie adequately and accurately stated that the findings were accurate and still exist.

The CHAIRMAN. Mahalo. Thank you very much.

I would like to ask Congresswoman Hanabusa for any comments she may have or questions she would like to ask.

Ms. HANABUSA. I think what's missing in this record is this is an opportunity that we all have to educate members of Congress in particular situations, the members. This is a unique opportunity where we can educate or help better understand the situation that we're in. The NAHASDA, which is the underlying legislation and the changes that are being made in terms of HUD, is really an opportunity to look at housing as well.

So if you can shift your gears a little bit, and if you can put into the record, either one or both of you, the significance of homeownership to the Native Hawaiian people, and why, in the creation of the Hawaiian Homes Commission Act of 1920, it was deemed to be so important a part for the preservation of the people and the culture?

And I think that if we can put that forth from that perspective, we will have a record that Senator can take back, and we can take back to the Congress to show how NAHASDA is significant. As you

know, NAHASDA really began as a Native American housing issue and also covers Native Alaskans as well.

But if you can help us by telling the members of Congress how critical this one piece is.

Ms. MACKENZIE. I think I can help in the sense of looking a little bit at the history of Hawaiian Homes Commission Act, and noting that the representatives from Hawaii who sought session act 10 had basically been concerned because Hawaiians had been frozen out of their lands and driven into the cities, and that they were dying.

And the idea was that returning to the land would help to reestablish a traditional Hawaiian way of life. And you can see the reestablishment of that if you go into the homestead communities today. And what this bill would do by allowing more Native Hawaiians to participate and indeed to get homesteads, would be then to encourage and reenforce the idea of Native Hawaiians returning to their lands and being able to be themselves in their own territory.

Mr. WURDEMAN. Thank you for the question, Representative Hanabusa. As I alluded to briefly earlier, I think homeownership provides stability in a people, in a community, and the social statistics of Native Hawaiians, welfare rolls, incarceration rates, health issues are very, very significant in Hawaiians rank on the top of all of those social ills at this point, and have been for many, many years.

And the legislation and NAHASDA and homeownership I think is an important step in providing stability.

I have ohana, and we all have ohana who don't have those opportunities, that have been homeless. That, you know, and I see a lot of that. Those are issues in my own family, and amongst some of my own friends. And I have a cousin who recently received an award on Hawaiian Home Lands and was a recipient of these programs who raised a family of seven children and moved from house to house, apartment to apartment throughout the raising of his kids, and never had a stable home life.

He is just one example of success and how happy they were to finally own a home after all these years, after being on these waitlists. And I really believe that similarly allowing others and creating these opportunities for others that don't have these opportunities will go a long way in helping address some of these social ills that I talked about in providing our Native Hawaiian families with the stability of a normal home life.

Ms. MACKENZIE. I would just like to add, in looking at this, I thought, you know, in many ways we're back in the same situation we were in 1920 with people coming to Congress basically saying our people are dispossessed from their lands. They're dying. They don't have a place to live. And we're in that same situation.

So I see this S. 65 as an opportunity to really fulfill the promise of the Hawaiian Homes Commission Act. Thank you.

Ms. HANABUSA. One of the issues that has always bothered me from the time that I served in the State Legislature, and I was in a very ironic situation, because it was over the Felix—what I term the Felix investigative committee, and that was to learn that there was a period of time in our history where the State of Hawaii wasn't a state then, I guess it was the Territory of Hawaii—I'm not

quite sure what point it carried over—prohibited the speaking of the Hawaiian language in our schools, for example.

It seems to me that what the great travesty that government has done is to have really taken away a lot of that cultural identity. This S. 65, to be the most critical component of it is the fact that it reauthorizes Title VIII of the NAHASDA, which then gives to 2015 the authorization for really the Hawaiian Homes Commission to then receive those funding.

So can you elaborate on the significance of the development of the community itself, and how it does right a major wrong that even those in state government today I don't think recognizes what was done to our Native people.

Mr. WURDEMAN. I'll start with the comment about the state government and how it has failed over the years. And it was encouraging, just the other day they finally addressed the past ceded land revenue issues that have persisted since 1978 that there was a clear legal obligation for the state government to fulfill, but the Native Hawaiian people, and despite the legal obligations and responsibilities, have always taken the back of the room, always been in the lessor priority when there have been other needs for the community.

So the Native Hawaiian people have persevered through all of this. Despite all of the legal mandates, they have continued to try to revitalize their culture through the language, as Congresswoman Hanabusa has stated, and that has been a lot of self-initiative, the formation of charter schools, and a pride within a people of regaining what was stripped from them or from their grandparents and their parents in generations before them to revitalize this culture.

And part of this growth and development, again, is to allow these kind of opportunities that Congress set forth way back in 1920, as far as its rehabilitation process. And this is just another component to that rehabilitation process and the growth and development, or redevelopment of the culture in the Native Hawaiian community.

Ms. MACKENZIE. I don't know that I can add much more to that. But I would like to stress something, that the Native people have persevered in spite of oftentimes government opposition in things like Hawaiian language or Hawaiian culture.

So imagine what we could do if we had support? And what I see this bill doing is offering the opportunity to the Federal Government and the Department of Hawaiian Home Lands to really support the Native Hawaiian people in this kind of second or third Renaissance of our culture, our language and our ways.

Ms. HANABUSA. Thank you. Thank you, Senator.

The CHAIRMAN. Thank you, very much, Congresswoman Hanabusa, for your questions and your comments.

I want to add that since the overthrow of the Hawaiian Kingdom, the people, Native Hawaiians have really, in a sense, suffered and were scattered to the point where Prince Kuhio Kalanaiana'ole was concerned about this, and wanted to find a way of bringing the people back. And, of course, the homestead concept came to being.

He was able, in his years in Congress, to bring that about. And so in 1920, the Hawaiian Home Lands bill was passed. And remember this was by the consent of the Congress of the United States.

So it really sent, in a sense, the future of a government-to-government relationship that we're facing today, and want to complete that government-to-government relationship.

So parity is so important. When I say "parity", I mean our country had laws to deal with our indigenous people, American Indians and Alaska Natives. And since we became a territory and now a state we have not dealt with indigenous Hawaiians. And so the time is appropriate for us to do that. It's necessary, really, at this point in time.

I want to thank you for your mana'o on this, and look forward for further discussions on this, and for the support.

I want to tell you that support from Hawaii is very, very important to us in Congress, because opponents always want to say Hawaii doesn't support it. And now it's there legally, too. And so I'm really thankful and grateful that we have come to this point, and look forward to pursuing this even further. So I want to thank.

Do you have any further questions or comments?

Ms. HANABUSA. No, thank you.

The CHAIRMAN. I want to thank the second panel for your mana'o. It has been very, very helpful to us. Thank you.

Now, I would like to call on a third panel, and invite you to the witness table. Serving on the third panel is Mr. Kali Watson, Chair of the Housing & Economic Development Committee for the Sovereign Councils of the Hawaiian Homelands Assembly; Robin Danner, President/CEO of the Council for Native Hawaiian Advancement in Honolulu Hawaii; and Ms. Kehau Filimoeatu, Chair of the Hawaiian Community Assets in Honolulu, Hawaii.

I want to welcome you with much aloha, and good to see all of you here this hearing. Kali, will you please proceed with your testimony?

STATEMENT OF KALI WATSON, CHAIRMAN, HOUSING & ECONOMIC DEVELOPMENT COMMITTEE, SOVEREIGN COUNCILS OF THE HAWAIIAN HOMELANDS ASSEMBLY

Mr. WATSON. Thank you, Chairman, Senator Akaka, as well as Congresswoman Hanabusa.

We appreciate the opportunity to be here today to present testimony on Senate Bill 65. My name is Kali Watson. I'm the Chairman of the Housing & Economic Development Committee for the Sovereign Councils of Hawaiian Home Lands Assembly, which represents approximately 30 different homestead associations throughout the state spanning from Anahola to Nanakuli on Oahu, all the way to Panaewa on the Big Island. I also represent the Association of Hawaiians for Homestead Lands. We support Senate Bill 65.

Let me first start off. We all recognize that this is about money, about funding for housing. But I think it's more than that. It's more about people. I know when I first left the Department, we started up a non-profit and started working in the community. And one of the families, or one of the projects we started was the Replacement Home Project.

I remember sitting in the basement of this home in Kewalo on this island. And as I was sitting there, I was looking around, and I saw this family that basically was living in a dilapidated house where the top floor was so unsafe that they couldn't live there. The

kids slept in a tent in the yard. And for their front door, they had this wooden plank that they would literally push it on the side and use it as a front door. It wasn't even attached. When it rained, there would be a stream of water passing through the house.

And so one of the things that really struck me is how can we help this family? And so we put together a loan package. And what was key to making that loan work was NAHASDA. It provided us $6,000 that was used to actually build this house.

I worked with other associations and communities groups in order to help this family, Alger, they provided stipends so the husband could go to a nursing school. The other thing is I was kind of wondering, the wife and the daughter were present. They never said anything. They never smiled or anything. And some guys might think it's funny, but they had no teeth. So the Alger Foundation stepped up and provided the dental work. And today, I got to say that it's a good situation. They have a new house and they have a place they can call home. That was because of NAHASDA, in a major part. While I was working at the Department, and over the years working at my non-profit, we've been able to see the impact of NAHASDA in homesteading communities, and it's been tremendous. We look at the newer subdivision and these large, beautiful homes in Kaneheli, in Kapolei. You look on Maui at Waiehu Kou, beautiful homes. As well as Laiopua on the Big Island. So this funding source has had a tremendous impact in helping our people obtain affordable housing.

The Department has also undertaken innovative approaches which have made a difference. For example, the Hoolima project in Kapolei, which is rent to own. It's enabled to access low income housing, tax rates, and put together different types of funding including NAHASDA, putting in infrastructure for subdivision to make it work.

In Waimanalo, Kupuna housing, is also using various sources. I think with the Department in the process of, I guess, doing their housing plan, NAHASDA could be looked at in providing funding for rental projects.

Some of the new products besides rentals that have come to fruition is in Nanakuli, for example. We're doing a 48-unit low income rental housing project called Hale Makane. That particular project targets families in the 30 to 40 percent area median income. And has basically strung together a bunch of eight different funding sources in order to make it happen.

The thing about the housing, we're trying to address a waiting list of over 21,000 people that spans throughout the islands. And without this particular funding source, the NAHASDA, it would be very, very difficult to address that need. And I think that, you know, when you look at what's happening around Hawaiian communities, the timing is critical right now for the continuation of this funding source.

We had the $600 million settlement that was passed in 1994 coming to an end. That's $30 million a year that is going away.

In the past couple years, the state has not provided general funds to our program. Contrary to the 1978 constitutional amendment that mandated not only administrative, but development

funds shall be made available to this program. The legislature has not done that.

There's a lawsuit going on right now trying to address that. Hopefully we will be successful and we will be able to access those funds. I guess the point I make is that NAHASDA is very, very important to our Hawaiian community. This S. 65 bill is something that I think will be critical in us moving forward.

The Department is at present time conducting their housing plan under this act. The community and the beneficiaries, I anticipate, will step forward and become an active participant in developing a plan that addresses this waiting list.

What is also exciting is that we see in the Hawaiian communities a collaboration, not only by the homestead associations and the waitlists, the advocacy groups, but now OHA has started to step forward. They funded major infrastructure costs. They recently, I guess we were all at the signing ceremony where the $200 million in lands in Kakaako is being transferred to the Office of Hawaiian Affairs, and they've signed a resolution in agreeing to work with the Department of Hawaiians to make that, not only a productive relationship, but more importantly, an opportunity to provide housing, economic development, and other things that will have a very positive impact on our people.

I've had the opportunity to talk with the Kamehameha Schools trustees, and they too are looking to start to collaborate and work with the Hawaiian organizations, the trust organizations. And I think collectively we have an opportunity at this time in history to really, really make a difference, but whether it be the Federal Government in the continuation of our funding, whether it be the Ali'i Trust working together to address the needs of our people, whether it's the SCHHA, the Hawaiian Community Assets, all of these organizations work together as collective groups. That's going to be key for our future and our people. Thank you.

The CHAIRMAN. Thank you, very much, Kali, for your testimony and your support of the bill.

[The prepared statement of Mr. Watson follows:]

PREPARED STATEMENT OF KALI WATSON, CHAIRMAN, HOUSING & ECONOMIC DEVELOPMENT COMMITTEE, SOVEREIGN COUNCILS OF THE HAWAIIAN HOMELANDS ASSEMBLY

Dear Senator Akaka, Senator Inouye and Members:

Thank you for the opportunity to provide testimony in support to S.65 relating to the Hawaiian Homeownership Opportunity Act of 2011—which amends the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) and the Housing and Community Development Act of 1992. This bill extends through FY2015 the authorization of appropriations for housing assistance for Native Americans and loan guarantees for Native Hawaiian housing.

This Bill also amends the NAHASDA to: (1) make the Department of Hawaiian Home Lands of the state of Hawaii eligible for loan guarantees; and (2) extend through FY2015 the authorization of appropriations for the credit subsidy to cover the costs of federal guarantees for financing for tribal housing activities.

Federal Block Grants from NAHASDA have provided significant infrastructure development and facilitated the construction of much needed affordable housing in many homesteading communities throughout State of Hawaii. At a time when DHHL's residential waiting list has grown to 21,216 as of June 30, 2011, the need for the reauthorization and increase of NAHASDA funding is even more critical, especially with the anticipated end to State funding under the $600 million settlement. Without said continued funding, the affordable housing activities will take a major hit.

DHHL is presently in the process of updating its Five Year Housing Plan as required under NAHASDA and significant input by its beneficiaries is anticipated. Besides the standard single-family residential housing, DHHL and its beneficiaries are embarking on more condense and far expansive development of rental housing and condominium developments. This will not only provide new types for DHHL housing products, and in larger numbers, but will also allow the leveraging of its funds with other funds. In the 48-unit low income rental Hale Makana O Nanakuli Project, the Nanakuli Hawaiian Homestead Community Association, with the assistance of the nonprofit Hawaiian Community Development Board was able to access federal CDBG and HOME funds from HUD, Rural Development 515 and 521 funds of close to $14 million. With continued NAHASDA funding, more projects like this are possible.

The Sovereign Councils of the Hawaiian Homelands Assembly, formerly the State Council of Hawaiian Homestead Associations was founded more than 20 years ago to unite homestead communities and to advocate for the beneficiaries of the Hawaiian Homes Commission Act of 1921. The SCHHA is the oldest statewide advocacy organization representing the interests of more than 30,000 beneficiaries and families residing in the communities of the Hawaiian Home Land Trust. Its mission is to promote the self determination of native Hawaiians and the well being of homestead communities.

I urge you to please pass this measure, S. 65.

Robin, will you, please proceed with your testimony.

STATEMENT OF ROBIN PUANANI DANNER, PRESIDENT/CEO, COUNCIL FOR NATIVE HAWAIIAN ADVANCEMENT

Ms. DANNER. Welcome home, and welcome to the Committee staff for making the trip to our home lands. For the record my name is Robin Danner. I am the President of the Council for Native Hawaiian Advancement, which is most comparable to organizations like UNSET, or NCAI or AFN.

CNHA is governed by a 21 member board of directors, consisting of all Native Hawaiian leaders from across the nation representing diverse areas of service including education, culture, affordable housing, civic affairs and relevant to today's topic, homestead leaders on our board working directly on trust land solutions. Many of our CNHA board members are here today, Mr. Chairman, because of your leadership in bringing a field hearing here to Hawaii. They can physically see that when I tell them that I'm going to Washington, DC, I'm actually doing something, and today they can actually participate in that. Our vice chairman is here, Billy Ornellas, and about a dozen of our members.

As a 14-year homesteader, I have raised four of my children in my homestead, and over the last 11 years, have lead CNHA to become one of the most active policy advocates, along with the SCHHA, on the unique issues of the Hawaiian Home Land trust. While these trust lands may be limited by blood quantum under the homesteading program, we know that these lands are nourishing all of our children, regardless of blood quantum, by providing lands for charter schools, the language programs, lifting up our communities by creating centers of commerce on these trust lands, providing places to heal and to reconnect through the placement of relevant health and other services on these trust lands.

Definitely, as Kali said, providing shelter to thousands of family members through the development of housing on these lands. Every home certainly that CNHA has assisted a family with over the last decade, in partnership with Hawaiian Home Lands, has included families that are small in Hawaiian, big in Hawaiian, even

in some cases no end residence. These are powerful lands, not just for beneficiaries, but for everyone.

CNHA's full testimony submitted to the record approaches the hearing topic of the Senate Bill 65 under three main areas. First, NAHASDA funding and impact, which I think Congresswoman Hanabusa alluded to over the last decade. Second, access to capital strategies under the reauthorization; and third, the priority of self-determination in the implementation of NAHASDA.

The modest levels of NAHASDA funding dedicated to Hawaiian Home Lands is really the first and only consistent federal funding to flow to Hawaiians since passage of the Hawaiian Homes Commission Act 90 years ago. And this first time consistent funding source has only been flowing for the last ten years. Baby steps in comparison to our counterparts in Indian Country, prior to NAHASDA flowing to their trust land areas which began for them in 1996, federal housing dollars flowed under the 1937 Housing Act, providing a miniscule one percent of the national public housing allocation to trust land areas on the continent and Alaska. Indian Country, and most certainly Hawaiian Home Lands have much to catch up on.

With only ten years under our belt, the impact of NAHASDA funds has been a fantastic beginning, and it must be said, NAHASDA is the lifeline of hope to the low and moderate income families on the waitlist that year after year are passed over due to the inability to qualify for high end housing costs. NAHASDA is vital to ensuring that the promise of Prince Kuhio in enacting the HHCA is accessible to every beneficiary regardless of income.

While DHHL has utilized the vast majority of its NAHASDA allocation each year to much needed infrastructure and subdivision development, the annual portion dedicated to community based service providers such as CNHA, and many of our member organizations, have been dedicated to financial education, credit history repair, and down payment assistance that is helping low and moderate income families achieve homeownership.

We have leveraged NAHASDA seed funding to attract other capital sources, and today, have more than 350 Native Hawaiian families in our Financial Education & Counseling pipeline.

I would like to mahalo Aunty Keahu, who is here today from our Board of Directors, for creating an environment for CNHA to partner with her organizations, such as Hawaiian Community Assets to deliver these powerful services.

NAHASDA funds have also been used by CNHA and its member organizations to develop and deliver solar water heating systems, and photo voltaic renewable energy systems. Senator, I cannot express enough how important this area is and will continue to be in making sure that our communities are not left behind and last on the grid. NAHASDA is essential to ensuring that low income families are first to benefit from the technologies of renewable energy and reduced energy costs in their homes.

Under the Access to Capital element of NAHASDA, we applaud the community for including language to upgrade the HUD 184A home loan product, to allow for refinances. Thank you.

This ability to refinance to historic low levels of interest rates is worth tens of thousands of dollars over the life of a mortgage loan. Families need this exactly right now.

We also strongly support the Committee's work to include in Senate Bill 65, the extension of Title VI from the Indian NAHASDA program to Hawaiians.

As you know, Senator, Title VI allows DHHL to leverage its annual NAHASDA allocation up to five times the amount to access capital for very large developments.

Our final area in our testimony addresses the "self-determination" that are very much part of the NAHASDA Title, the Native American Housing Assistance and Self-determination Act. We would ask that the Committee include more specific language and encouragement to clarify the self-determination goals of the legislation are for the collective people, the collective beneficiaries in the homesteads, and not State Government. Consultation by HUD, by DHHL, with beneficiaries and their homestead association leaders should be emphasized.

In closing, as the Committee moves Senate Bill 65, I appreciate the educational aspect of the Chairman's work in educating fellow Committee members, the Congress and other Native peoples, that as Hawaiians, we are a federally recognized Native peoples, yet we are the only group of the three that has yet to engage in a government-to-government relationship like American Indians and Alaskan Natives.

Chairman Akaka, in just one year as Chairman under your leadership and the work of your staff, and Director Loretta Tuell, you have done more to remind and to educate others that our people and the federal programs dedicated to addressing our condition are not race-based, but rather are within the power of the Congress to address the issues of unique category of Natives under the U.S. Constitution.

So I thank you, Chairman. I have worked in the federal arena on Native issues for just under 24 years now, and the last 12 months have shown an incredible sensitivity and accuracy as to our status among the family of Native nations. Mahalo.

[The prepared statement Ms. Danner follows:]

PREPARED STATEMENT OF ROBIN PUANANI DANNER, PRESIDENT/CEO, COUNCIL FOR NATIVE HAWAIIAN ADVANCEMENT

Aloha Chairman Akaka and Members of the Senate Committee on Indian Affairs,

My name is Robin Puanani Danner. I am the President and Chief Executive Officer of the Council for Native Hawaiian Advancement (CNHA), founded in 2001 to enhance the cultural, economic and community development of Native Hawaiians. CNHA, with a membership of over 150 Native Hawaiian Organizations, 28 percent of which are Hawaiian home land organizations, is dedicated to addressing the challenges in our communities from education to business, affordable housing to cultural preservation, and is a statewide advocate most comparable to the National Congress of American Indians (NCAI), and the Alaska Federation of Natives (AFN).

I am native Hawaiian, born on the island of Kauai, raised in the fishing village of Niumalu, the Indian reservations of the Apache, Navajo and Hopi, and spent many years among the Alaska Native peoples. For the last 14 years, I have lived on my Native homestead issued under the Hawaiian Homes Commission Act, with my children and husband.

My background includes former positions in finance as a bank executive, a Tribal Housing Authority executive director, and county housing director serving Native populations. Currently, I am the chair of the board of the Homestead Community

Development Corporation that in addition to my position with CNHA, is highly relevant to the field hearing topic of *S. 65—Hawaiian Homeownership Act of 2011.*

Native Hawaiians and the Federal Trust Relationship

As the Committee knows, Native Hawaiians are among the families of Native peoples of the United States, and although not as well known, are included in the federal Indian policy and trust relationship. In 1920, the U.S. Congress enacted the Hawaiian Homes Commission Act (HHCA), establishing a federal land trust that nearly mirrors the content of the 1906 Indian Allotment Act. In 1959, the U.S. Congress enacted the Hawaii Admissions Act, which includes language to further recognize the trust relationship with Native Hawaiians. Over the last 90 years, the U.S. Congress has enacted over 150 statutes recognizing my people as Native, like American Indians and Alaska Natives, using the plenary power authorized under the U.S. Constitution to address a myriad of issues.

Similar to the Office of Insular Affairs for the territorial peoples of the U.S. and the Bureau of Indian Affairs for American Indians and Alaska Natives in the Department of the Interior, Congress created the Office of Native Hawaiian Relations to continue the process of reconciliation in accordance with P.L. 103–150, the Apology Resolution, and to oversee the trust responsibilities of the United States to Native Hawaiians, with a particular emphasis on the HHCA and the 1995 Hawaiian Home Land Recovery Act.

Native Hawaiians and the State Trust Relationship

One of the conditions of statehood enacted by the United States was a compact between the federal and state governments, to administer the HHCA referenced above through the establishment in 1961 of the state of Hawaii Department of Hawaiian Home Lands (DHHL). The Hawaii state constitution incorporates and embraces the United States' trust relationship to Native Hawaiians, which was further strengthened by the 1978 Constitutional Convention establshing a second state agency, the Office of Hawaiian Affairs (OHA). Each of these state agencies are public trusts of the people of Hawaii, not representing Native Hawaiians, but rather representing all of the people of our state to deliver on the trust mandates established under federal law and state law. There are similar "Offices of Indian Affairs" in other state governments, including Utah and Arizona.

In 2011, the state of Hawaii enacted Act 195, to assist the Native Hawaiian people in the development of a roll that can be used for government reorganization efforts, and to urge the federal government to recognize a Native Hawaiian government. In 2011, this honorable committee, the Senate Committee on Indian Affairs, voted to approve the Native Hawaiian Government Reorganization Act, to similarly recognize the self-governance of Native Hawaiians, creating parity with the more than 560 Native governments in approximately 35 states of the country.

In summary, the relationship of Native Hawaiians to state and federal governments, is very similar and mirrors the policies and agencies of our counterpart Native peoples in the other 49 states. The Department of Hawaiian Home Lands (DHHL) and the Office of Hawaiian Affairs (OHA), are Hawaii state agencies with trust responsibilities to Native Hawaiians. Similarly, the United States government has acknowledged its federal trust responsibility to Native Hawaiians and administers it through agencies such as the Departments of the Interior, Health and Human Services, and Housing and Urban Development.

Native Hawaiians and Their Trust Land Representative Organizations

Similar to Indian Country and the organization of Native governments around trust land areas, eligible Native Hawaiians have long held and established governing organizations organized around the trust lands established under the HHCA. These organizations are commonly referred to as homestead associations, or homestead beneficiary organizations. Over 30 such homestead associations exist across the state, tied directly to homestead trust lands of the HHCA. Each has enrolled homestead members and residents, and each democratically elects its leadership.

In many ways, these homestead associations mirror the mission and representation that pueblos, tribes, or villages do in other areas where federally created trust land areas exist. Participation is voluntary in nature by eligible members, and the actions of these homestead associations are governed by the participating eligible members.

Many other significant types of Hawaiian organizations exist, including social justice private nonprofits, member nonprofits like CNHA or the civic clubs and Royal Hawaiian Societies. These organizations are similar to the service focused, cultural and advocacy organizations of many Native organizations around the country. The homestead associations are significant in the context of the hearing topic of *S. 65—Hawaiian Homeownership Act of 2011*, because it calls for the reauthorization of

Title VIII of the Native American Housing Assistance and Self-Determination Act (NAHASDA). Self-determination in the title of this powerful housing law is indicative of the connection between housing solutions, and the self-determination of the people themselves, through their respective homestead associations.

S. 65—Hawaiian Homeownership Act of 2011

Our testimony is organized into three distinct areas of discussion and recommendations—NAHASDA, Access to Capital and Self-Determination.

NAHASDA

This discussion content focuses on the amendment that added Title VIII to NAHASDA, through enactment of the Hawaiian Homeownership Act of 2000.

A. Trust Relationship & First Federal Funding to the HHCA

Although the promise of the Hawaiian Home Land Trust has existed for over 90 years when the HHCA was enacted in 1920, the only federal funding of any significance to be dedicated toward its success consistently each year, has been NAHASDA funds which began flowing only a short 10 years ago.

Eighty years of little to zero federal resources makes for a situation of extreme catch up, but the last 10 years of modest but stable NAHASDA funding has been the beginning of incredible opportunity. It must be acknowledged that one decade of consistent funding is a very short period of time, yet the impact during that time is not only visible, it has created a new energy and enthusiasm for the possibilities in fulfilling the original promise of residential homesteading under the HHCA. NAHASDA is one of the only tools and resources available to the Hawaiian Home Land trust to bring the HHCA within reach of the hardworking low and moderate income families that remain on the waitlist.

We offer our full support for S. 65—the Hawaiian Homeownership Act of 2011 for the following basic reasons:

1) *Trust Responsibility*—It embodies an important and long awaited component of the trust responsibility to native Hawaiians by providing stable and consistent funding;

2) *Affordable Housing Planning*—It continues the benefits to the management of the Hawaiian Home Land Trust by requiring DHHL to organize a strategic plan and to deliver to HUD at regular intervals, an updated Native Hawaiian Housing Plan;

3) *Self-Determination*—It lays a strong foundation for the Hawaiian Home Land Trust to transition from a 90-year paternal approach to land development and land management to the incredible power of including homestead beneficiaries in the administration of their land trust through the time tested success of federal self-determination policies.

B. NAHASDA Funding Impact

While DHHL is the direct grant recipient from HUD of NAHASDA funds, the agency has over the years, set aside roughly 10 percent of its annual funding award, to provide sub-grants to community based organizations. CNHA and many of our member organizations have competed for and received sub-recipient NAHASDA grants. Following are a handful of examples of the impact of these funding awards:

1) *Solar Water Heating Systems*—NAHASDA funds have been vital seed funding to create an environment for the transformation of household energy costs by low to moderate income households on Hawaiian home lands. This is perhaps one of the areas where we must lead the charge to ensure that regular every day families have full and unfettered access to the incredible renewable energy technologies.

There are approximately 7,000 existing residential homes located in our trust land areas. Only 15 percent have one form or another of solar power to either generate electricity or heat water. The projected capital need to achieve a 100 percent transformation of homestead neighborhoods is just under $40 million. With a small grant from NAHASDA, the journey has begun, but more importantly, the residential solar projects funded by NAHASDA have attracted private capital and is leveraging dollars and attention to homestead areas. In addition to reducing utility costs for struggling families, these investments are creating jobs and an entire cottage industry for small businesses in Hawaii.

2) *Down Payment Assistance*—NAHASDA funds have been utilized to develop meaningful and culturally designed Individual Development Accounts (IDA) to support down payment assistance on home purchases, as well as youth financial

education curriculum that reminds us of the ingenuity of our ancestors in resource management, something that financial education is all about.

3) *Homeownership Centers*—NAHASDA funds are responsible for the development of a Homeownership Resource Center that delivers affordable housing services from inside a neighbor island homestead area. The homestead association embraced its responsibility to bring valuable services to the people, and with the support of NAHASDA, operates a full service foreclosure prevention, financial education counseling and preparation for mortgage loan qualifications.

We would recommend that NAHASDA funds expended by DHHL begin to take an investment direction of vertical housing units over subdivision infrastructure, including homeownership, farming/ranching housing, and multi-family rental development.

Perhaps most important beyond the funding level and direct investment of NAHASDA funds in the projects described above, is the power of validation and empowerment that legislation like the Hawaiian Homeownership Act of 2011 creates on the ground in community. It cannot be underestimated, the impact on community leaders when Congress acts upon the issues that are most pressing and most relevant to the day-to-day challenges of families. Passage creates momentum of projects yes, but it also creates a momentum of community spirit to tackle tough issues together and in a systematic way.

II. Access to Capital

This discussion content focuses on information and recommendations relevant to the availability of capital for home development, qualify of life home improvements and leveraging of federal funding in the capital markets.

A. HUD 184a

The HUD 184a component of the legislation authorizes a home loan guarantee product to attract capital to the construction and purchase of homes located on trust lands. This product cannot be overstated as to its important. Capital is the lifeblood of any healthy community, and as is well known on Indian reservations and Hawaiian Home Lands, there are only a handful of home loan products available.

The significance of the HUD 184a program can only be truly appreciated when one considers what would happen in their own neighborhoods if access to capital was shut down, and empty homes were not able to be purchased for lack of mortgage capital and overcrowding of families beyond the safe capacity of a residential structure. The Reauthorization of HUD 184a is paramount, as is the upgrade to the program to allow for refinancing, and equity extraction for education, home improvement and small business investment.

B. Extending Title VI to Hawaiian Home Lands

The trust land nature of Hawaiian Home Lands is both a blessing and a curse for affordable housing and economic development. It is a blessing for many of the same reasons it is for Indian Country, which is a preserved land base held in trust that cannot be alienated, for our people to nurture Native Hawaiian language and culture, and continue our life ways as the original peoples of the Hawaiian Islands, regardless of homesteading eligibility by any individual Native Hawaiian. However, access to capital is made more difficult due to the trust nature of our lands.

It need not be a curse, with strategic approaches that ensure capital can flow to trust land developments and projects. Title VI is a section of NAHASDA that is currently only available to Tribal NAHASDA grantees. It authorizes the grantee to leverage up to five times the annual NAHASDA allocation to plan and implement developments that would be made more expensive if piecemeal funding were the only option. Title VI is an excellent, no-cost amendment that would provide flexibility to leverage the modest annual NAHASDA allocations. We support inclusion of native Hawaiians to Title VI of NAHASDA.

C. Needs Assessment Study

It has been a full decade since the initial passage and inclusion of Native Hawaiians in NAHASDA. Funding levels have been at the discretion of Congress and the Administration over that period of time. We recommend that a needs assessment be conducted, with full engagement of homestead beneficiary leaders to inventory the need based on consultation, the realities of development challenges due to the location of lands in the trust, and the recent results of the 2010 Census.

III. Self-Determination

This section discusses the significance of the self-determination intent of NAHASDA and recommendations to maximize the opportunities to create relevant

and long term solutions in trust land areas. It should be noted that some at the state agency of DHHL have wrongly assumed that the self-determination intent of NAHASDA, and even the HHCA, is for DHHL, when in fact, federal self-determination policies are for Native peoples and their representative organizations, not state governments. Although state government is improving its education of its employees in this regard, the confusion by even a small minority of state employees can create barriers to the implementation of the goals of self-determination to the people.

A. Homestead Beneficiary Consultation

Consultation with beneficiaries by DHHL has greatly improved over recent years, and has relied upon the precedence and the best practices of tribal consultation when state government is contemplating significant changes in policy or program direction. One of the continual misnomers in the administration of NAHASDA as it relates to Hawaiians is the confusion by DHHL and sometimes HUD, who these agencies should be consulting with.

In Indian Country, HUD consults with tribes, the technical recipient and authority for their allocation of NAHASDA funds, unless it is tribally designated to another entity like a tribal housing authority. For Hawaiians, the recipient and authority for our NAHASDA allocation is a state agency intermediary. The homestead associations that are representative of the beneficiaries collectively, are the comparable to Indian Country's tribes, therefore, consultation by HUD and DHHL should be conducted with beneficiaries and their geographic representative associations. We would recommend that the Committee encourage DHHL and HUD to maximize the benefits of consultation by bringing clarity to the issue of Homestead Beneficiary Consultation.

B. Empowerment & Capacity Building Programming

Not more than 5 percent of the annual NAHASDA allocation can be used for administration by state government (DHHL). Over the last decade, DHHL has utilized administrative resources on its state government employees to engage and be trained at national convenings, and to strategize with HUD and Native leaders. The complete absence of empowering homestead associations and beneficiary community leaders themselves is detrimental to the short term and long term capacity building of the people and associations that remain in our communities when state government employees retire or leave employment.

Indeed, opportunities for beneficiary leaders to network and become educated on national affordable housing solutions, and especially with other Native counterparts is an incredible missed opportunity. For example, the cross pollination of ideas, of strategies such as the coordination of Native CDFIs, of leveraged funding strategies that are taking place in other areas of Indian Country, can only be implemented by homestead associations, and not state government.

We strongly recommend that HUD's oversight ensure that the self-determination tenets embodied in NAHASDA include review of how state government is building the capacity, empowerment and self-determination of the people it was intended to serve. We applaud DHHL in its recent efforts to improve in this area, and would recommend that the self-determination and capacity building of homestead leaders be a standing component of its Native Hawaiian Housing Plan.

Self-determination is a corner stone of success in federal policy. It has resulted in more progress made in bringing solutions to the challenges of Native communities than any other policy. NAHASDA is a powerful tool to embrace the power of self-determination when our people are engaged, consulted with and challenged to implement solutions. We emphasize the continual recognition and encouragement of federal and state agencies to administer its programs with this over-arching goal of NAHASDA.

Summary & General Recommendations

In conclusion, we thank the Committee for its championship of good public policy that enables Native communities to achieve our full potential. Congress has the plenary power under the constitution to address the issues of Native peoples, and we mahalo Chairman Akaka for his lifelong work and service to all Native peoples of the country.

We support the reauthorization of the Hawaiian Homeownership Act, and appreciate the committee's work to improve on the tools available to address the affordable housing needs of our people.

Mahalo for the opportunity to submit comments to the Committee.

The CHAIRMAN. Thank you very much, Robin, for your mana'o and your testimony, and, of course, your support of the bill. And

thank you for what you and your group is doing to help the Hawaiians.

Now I would to call on Kehau. Please proceed.

STATEMENT OF KEHAU FILIMOEATU, CHAIR, HAWAIIAN COMMUNITY ASSETS

Ms. FILIMOEATU. Aloha, Honorable Senator Akaka, Representative Hanabusa and staff. Aloha.

My name is Kehaulani Filimoeatu. And I have been privileged to serve as the Board President of Hawaiian Community Assets, a nonprofit HUD approved housing counseling agency and emerging Native CDFI that assists low and moderate income communities secure and sustain permanent housing with a particular focus on Native Hawaiians.

I speak with you today to share my mana'o about the need to reauthorize NAHASDA through S. 65, which will ensure equal access by all indigenous peoples of the United States to funding for the purposes of financing affordable housing activities and housing-related community development activity as consistent with the purposes of the Act. NAHASDA funding has played a key role in our organization's history, but more importantly it has enriched the lives of thousands of Native Hawaiian families who have received our services, achieved the dream of homeownership, and continue to work toward self-determination.

Hawaiian Community Assets was founded in 2000 on the Island of Maui, with the charge to create a community development financial institution that would address the housing needs of Native Hawaiian individuals and families. Our mission was, or is to increase the capacity of low and moderate income communities to achieve and sustain economic self-sufficiency, with a particular focus on Native Hawaiians.

HCA supports permanent housing, culturally-relevant financial education, and asset building programs to achieve its mission.

Our particular focus on home ownership stems from philosophy that roots itself within the organization and every aspect of our work. This philosophy, known as Kahua Waiwai, espouses the basic philosophy of "A Sense of Place". The home is viewed as a foundation or Kahua. Upon this foundation is built the family's spiritual values, teachings and cultural traditions for Waiwai. It is that spiritual value of the home and its surroundings that provides stability and the opportunity for families to build a secure future. Opportunities that help stabilize family life help to create a more stable community. Thus, it be can be said that home ownership encompasses more than just purchase of a house, it is an investment in the future. A strong foundation, if built properly, will serve generations to come.

HCA has two long-standing program areas: Financial education services and community lending. Both drive the organization's comprehensive approach to achieving its mission.

Our financial education services program include homebuyer and financial education workshops, individualized housing counseling, including foreclosure prevention services, and training and technical assistance to help community-based organizations develop

and implement culturally-appropriate financial education using our Kahua Waiwai: Building a Foundation of Wealth curricula.

Our community lending program, known as Hawaii Community Lending, has experience originating mortgages on and off Hawaiian Home Lands, and currently provides loan packaging services, micro-loan products, and matched savings accounts to assist Native families secure and sustain permanent housing.

We have submitted a Homebuyer and Financial Education Program Report with our testimony that highlights our fiscal years of 2007 through 2011. It's made possible in part by NAHASDA funding.

I would like to take this opportunity to just highlight some key pieces of this report. With NAHASDA funding, HCA has provided services as a HUD approved housing counseling agency and Native CDFI for more than six years under grants and contracts with the state Department of Hawaiian Homelands and as sub-recipient, under DHHL, of HUD Native Hawaiian Block Grant funds made possible through the Native American Housing Assistance and Self-Determination Act of 1996.

NAHASDA funding has assisted HCA to establish itself as the largest provider of homebuyer and financial education services and products for Native Hawaiian families statewide. We have been able to leverage funding from both local, state, and national sources to enhance community development of Hawaiian Home Lands, primarily for homeownership. We have been able to secure partnerships to increase the rate of homeownership for Hawaiian Home Lands Lessees. And we have been able to enhance our capacity to create a continuum of service in the realm of housing counseling with the goal of providing Native Hawaiian families with the necessary education and tools to move from the beach to the biggest investment in their lifetime, a home.

In particular, since 2006, HCA has assisted Native Hawaiian family under the Home Ownership Assistance Program with becoming financially qualified to purchase homes and access mortgage financing in the following Hawaiian Home Lands Developments: Lanai, Kekaha, the Villages of Lealii, Kaupea Phases I, II and III, Waiehu Kou IV, Hoolehua, Kanehili Phases I and II.

HCA has leveraged funding for its work in providing financial education services and for other products from two of the largest national rural community development organizations, Rural Community Assistance Corporation, and Rural LISC, as well as Federal Administration for Native Americans to expand mortgage origination services and establish a youth financial education program that has served more than 930 Hawaii youth residing in low income communities with age and culturally-appropriate financial training.

In 2008 HCA formed an exciting new partnership between HCL and Bank2 Native American Bank to increase access to mortgage capital for beneficiaries of the Hawaiian Homes Commission Act. The partnership allowed HCL to utilize NAHASDA funding to originate the Section 184A Native Hawaiian Housing Loan Guarantee program; a mortgage product specifically designed for Native Hawaiians on Hawaiian Home Lands. The partnership and implementation of the new 184A loan program resulted in HCL seeing

a 367 percent increase in mortgage financing available to Native Hawaiian homeowners from fiscal year 2009 to 2010. This actually has been the highest volume of financing made available by HCL in a single year since its inception.

NAHASDA funding has been a primary source of building the capacity of HCA to expand its services to address the diverse housing needs of our Native Hawaiian families including homeless families living in transitional shelters, low income buyers, homeowners at risk of foreclose, and families engaging in financial education services.

The following key outcomes of HCA's continual education Homebuyer Financial Program would not have been possible without NAHASDA funding. We have now 3,465 individuals that graduated homebuyer and financial education workshops; 2,282 individuals that received credit counseling. These individuals who completed at least eight hours of homebuyer education training and received counseling of over an 18–24 month period, improved their credit scores by 100 points, decreased their debt by over $5,000, and increased their savings by over $7,000.

Twenty-eight Native Hawaiian families collectively saved $69,000 toward a down payment and closing costs in the Homestead Individual Development Account Program; and $123 million in mortgage loans have been made to serve Native Hawaiian families through Hawaii Community Lending.

NAHASDA funding has been instrumental in helping our Native Hawaiian families achieve economic self-sufficiency through homeownership. With the ongoing economic and housing crisis that we have encountered, we see an extraordinary opportunity to dedicate these funds to address the diverse housing needs of our families and promote self-determination through the establishment of a comprehensive work plan, to not only assist first time homebuyers, but also the hard working families forced to live on the beach, multi-generational households renting together to offset extremely high housing costs, and beneficiaries aspiring to building a foundation for wealth through aquaculture, agriculture, ranching and business development.

With this goal in mind, we see potential opportunities for NAHASDA funding for development of affordable transitional, rental, rent-to-own, multi-family, and self-help housing units to structure a broad pathway for our families to achieve and sustain the dream of homeownership that is in-line with our cultural values and traditions.

Opportunities for NAHASDA funding increases opportunities for Native Hawaiian youth, their families and their grandparents to achieve and sustain economic self-sufficiency through homeownership on aquaculture, agriculture, and pastoral lots located on Hawaiian Home Lands.

Implementation of loan products by CDFIs to further assist Native Hawaiian families overcome barriers to accessing credit necessary to become financially qualified to secure and sustain permanent housing and obtain financing for home purchase. Opportunities for NAHASDA funding, as far as leveraging local, state and federal resources dedicated to increasing and sustaining home-

ownership while simultaneously promoting self-determination through implementation of local food and energy initiatives.

As you can see, and we can feel, NAHASDA funding has helped change habits, improve lives, and better our people so we can build healthy communities for our future generations. With the reauthorization of NAHASDA through Senate Bill 65 we will have that opportunity to do even more with our people to ensure that we fulfill the vision of our Prince Jonah Kuhio as carried forth by you, Senator Akaka and Senator Inouye, and to the rest of our congressional delegation there.

Mahalo nui loa for the opportunity to share my mana'o on behalf of Hawaii Community Assets, but moreover the thousands of Native Hawaiian families we have served over the years.

On behalf of my own ohana, aloha nui, mahalo piha for being in Washington DC for us. Senator Akaka, we rejoice in your homecoming and we pine for those left in DC.

They will miss that senator whose name began with the letter A and ends with the letter A, who because he comes from Hawaii I've been told, "ah, you're from Hawaii. Your senator is Mr. Aloha."

So until we can replace your pono in Congress, the absence of your aura of aloha certainly will be missed. Mahalo.

[The prepared statement of Mr. Filimoeatu follows:]

PREPARED STATEMENT OF KEHAULANI FILIMOEATU, BOARD PRESIDENT/CO-FOUNDER, HAWAIIAN COMMUNITY ASSETS, INC.

Aloha Honorable Senator Akaka, Senator Inouye, and Staff:

My name is Kehaulani Filimoeatu. I am Board President and co-founder of Hawaiian Community Assets, Inc. a nonprofit HUD approved housing counseling agency and emerging Native CDFI that assists low- and moderate-income communities secure and sustain permanent housing with a particular focus on Native Hawaiians.

I speak with you today to share my manao about the need to reauthorize NAHASDA through S. 65, which will ensure equal access by all indigenous peoples of the United States to funding for the purposes of financing affordable housing activities and housing related community development activity as consistent with the purposes of the Act. NAHASDA funding has played a key role in our organization's history, but more importantly it has enriched the lives of thousands of Native Hawaiian families who have received our services, achieved the dream of homeownership, and continue to work toward self-determination.

Organization History

Hawaiian Community Assets, Inc was founded in 2000, on the island of Maui, with the charge to create a community development financial institution that would address the housing needs of Native Hawaiian individuals and families. Our mission is to increase the capacity of low- and moderate-income communities to achieve and sustain economic self-sufficiency, with a particular focus on Native Hawaiians. HCA supports permanent housing, culturally-relevant financial education, and asset building programs to achieve its mission.

Our particular focus on home ownership stems from a philosophy which roots itself within the organization and every aspect of our work. This philosophy, known as, *Kahua Waiwai* espouses the basic philosophy of "A Sense of Place." The home is viewed as a foundation (Kahua). Upon this foundation is built the family's spiritual values, teachings, and cultural traditions (Waiwai). It is the spiritual value of the home and its surroundings that provides stability and the opportunity for families to build a secure future. Opportunities that help stabilize family life help to create a more stable community. Thus, it can be said that home ownership encompasses more than just the purchase of a house—it is an investment in the future. A strong foundation, if built properly, will serve generations to come.

Program Areas

HCA has two long-standing program areas—financial education services and community lending—that drive the organization's comprehensive approach to achieving its mission.

Our financial education services program include homebuyer and financial education workshops, individualized housing counseling, including foreclosure prevention services, and training and technical assistance to help community-based organizations develop and implement culturallyappropriate financial education using our *Kahua Waiwai: Building a Foundation of Wealth*© curricula.

Our community lending program, known as Hawaii Community Lending, has experience originating mortgage loans on and off Hawaiian Home Lands and currently provides loan packaging services, micro-loan products, and matched savings accounts to assist Native Hawaiian families secure and sustain permanent housing.

We have submitted a Homebuyer and Financial Education Program Report with our testimony that highlights the impacts of the organization's homebuyer and financial education program during the Fiscal Years of 2007 through 2011 made possible, in part, by NAHASDA funding; however I would like to take the opportunity to highlight key pieces of this Report.

NAHASDA Funding

HCA has provided services as a HUD approved housing counseling agency and Native CDFI for more than six years under grants and contracts with the State Department of Hawaiian Homelands and as a sub-recipient (under DHHL) of HUD Native Hawaiian Block Grant (NHBG) funds made possible through the Native American Housing Assistance and Self-Determination Act (NAHASDA) of 1996.

NAHASDA funding has assisted HCA to:

(1) Establish itself as the largest provider of homebuyer and financial education services and products for Native Hawaiian families statewide;

(2) Leverage funding from local, state, and national sources to enhance community development of Hawaiian Home Lands, primarily for homeownership;

(3) Secure partnerships to increase the rate of homeownership for Hawaiian Home Lands Lessees; and

(4) Enhance its capacity to create a continuum of service in the realm of housing counseling with the goal of providing Native Hawaiian families with the necessary education and tools to move from the beach to the biggest investment in their lifetime—a home.

In particular, since 2006 HCA has assisted Native Hawaiian families under the Home Ownership Assistance Program with becoming financially qualified to purchase homes and access mortgage financing in the following Hawaiian Home Lands Developments:

- Lanai
- Kekaha
- Villages of Lealii
- Kaupea Phaes I, II, and III
- Waiehu Kou IV
- Hoolehua
- Kanehili Phases I and II

HCA has leveraged funding for its work in providing financial education services and products from two of the largest national rural community development organizations- Rural Community Assistance Corporation and Rural LISC as well as the Federal Administration for Native Americans to expand its mortgage origination services and establish a youth financial education program that has served more than 930 Hawaii youth residing in low-income communities with age- and culturally-appropriate financial training.

In 2008 HCA formed an exciting new partnership between HCL and Bank2 Native American Bank to increase access to mortgage capital for beneficiaries of the Hawaiian Homes Commission Act. The partnership allowed HCL to utilize NAHASDA funding to originate the section 184A Native Hawaiian Housing Loan Guarantee program; a mortgage product specifically designed for Native Hawaiians on Hawaiian Home Lands. The partnership and implementation of the new 184A loan program resulted in HCL seeing a 367 percent increase in mortgage financing available to Native Hawaiian homeowners from FY 2009 to FY 2010 and the highest volume of financing made available by HCL in a single year since its inception.

NAHASDA funding has allowed HCA the opportunity to work with families in a variety of contexts, including through self-help and private developers, county housing agencies, DHHL, and special populations such as the Kalapana community displaced by Kilauea lava flows and Niihau immigrants on Kauai.

NAHASDA funding has been a primary source of building the capacity of HCA to expand its services to address the diverse housing needs of our Native Hawaiian

families including homeless families living in transitional shelters, low-income homebuyers, homeowners at-risk of foreclosure, and families engaging in financial education activities together.

Program Outcomes

The following key outcomes of HCA's Homebuyer and Financial Education Program would not have been possible without NAHASDA funding as a foundational piece of implementing the organization's Homebuyer and Financial Education Program:

- 3,465 individuals graduated homebuyer and financial education workshops;
- 2,282 individuals received credit counseling;
- Individuals who completed at least 8 hours of homebuyer education training and received counseling over a 18–24 month period
  - —Improved their credit scores by 101 points from 540 to 641;
  - —Decreased their debt by $5,012; and
  - —Increased their savings by $7,003;
- 28 Native Hawaiian families collectively saved $68,677.35 toward down payment and closing costs in the Homestead Individual Development Account Program; and
- $123 million in mortgage loans have been made to serve Native Hawaiian families through Hawaii Community Lending.

Potential Opportunities

NAHASDA funding has been instrumental in helping our Native Hawaiian families achieve economic self-sufficiency through homeownership. With the ongoing economic and housing crises, we have an extraordinary opportunity to dedicate these funds to the address the diverse housing needs of our families and promote self-determination through the establishment of a comprehensive work plan to not only assist our first-time homebuyers, but also the hard working families forced to live on the beach, multi-generational households renting together to offset extremely high housing costs, and Beneficiaries aspiring to build a foundation for wealth through aquaculture, agriculture, ranching, and business development.

With this goal in mind, potential opportunities for NAHASDA funding may include:

- Development of affordable transitional, rental, rent-to-own, multi-family, and self-help housing units to structure a broad pathway for our families to achieve and sustain the dream of homeownership that is in-line with our cultural values and traditions;
- Increasing opportunities for Native Hawaiian youth, their families, and their grandparents to achieve and sustain economic self-sufficiency through homeownership on aquaculture, agriculture, and pastoral lots located on Hawaiian Home Lands;
- Implementation of loan products by local CDFIs to further assist Native Hawaiian families overcome barriers to accessing credit necessary to become financially qualified to secure and sustain permanent housing and obtain financing for home purchase; and
- Leveraging of Local, State, and Federal Resources dedicated to increasing and sustaining homeownership while simultaneously promoting self-determination through implementation of local food and energy initiatives.

As you can see, NAHASDA funding has helped change habits, improve lives, and better our people so we can build healthy communities for our future generations. With the reauthorization of NAHASDA through S.65 we will have the opportunity to do even more with our people to ensure we fulfill the vision of the late Prince Jonah Kuhio carried forward by you, Honorable Senators Akaka and Inouye.

Mahalo nui loa for the opportunity to share my manao on behalf of Hawaiian Community Assets and the thousands of Native Hawaiian families we have served over the years.

Malama Pono.

Attachment

Homebuyer and Financial Education Program Report

April 2012

The following report was developed by Hawaiian Community Assets (HCA), a 501(c) (3) nonprofit HUD approved housing counseling agency and Native Community Development Financial Institution, documenting the results of its Homebuyer and Financial Education Program between Fiscal Years 2006-2011. Funding for the program was in part provided by Native Hawaiian Block Grant (NHBG) funds made possible through the Native American Housing Assistance and Self-Determination Act (NAHASDA) of 1996. The data included in the report was collected and managed through HCA's HUD approved client management system, Home Counselor Online.

April 2012©

Organization History

Founding

Hawaiian Community Assets, Inc (HCA) was founded in 2000, on the island of Maui, with the charge to create a community development financial institution (CDFI) that would address the housing needs of Native Hawaiian individuals and families. After initially focusing on formation of a banking institution, HCA eventually settled on a mortgage broker operation within the existing nonprofit as the most efficient use of its capital resources. While developing lending programs for construction and long-term mortgages for use on Hawaiian Home Lands, HCA staff also developed a unique (United States Department of Housing and Urban Development) HUD approved homeownership and financial literacy curriculum - *Kahua Waiwai: Homebuyer Edition*© - adapted from standard HUD and Native American curriculum to reflect local culture and values.

For its lending program, HCA opened an office in Honolulu and adopted the trade name, Hawaii Community Lending (HCL). By mid-2002, HCA was offering a fully integrated program. Services included: outreach, training in financial literacy and homeownership, counseling for debt reduction, credit repair and saving, and access to construction and mortgage loans. In addition to these core services, HCA was providing important complementary services - for families, technical assistance on working through government processes and the complexities of having a home built, and for communities, assistance organizing to better address external barriers to successful community development.

In July, 2006, HCA moved its principal office from Maui to Honolulu in order to better serve families across the entire state.

Today, HCA maintains its primary goal of increasing the success rate among Native Hawaiians pursuing home ownership. This goal is accomplished by providing a comprehensive program that includes outreach, financial education and homeownership training, individualized counseling, and access to asset building program, loan packaging services, and micro-loan products.

Mission

HCA is a 501(c) (3), nonprofit HUD approved housing counseling agency and emerging Native CDFI. The organization's mission is to increase the capacity of low- and moderate-income communities to achieve and sustain economic self-sufficiency, with a particular focus on Native Hawaiians.

HCA supports permanent housing, culturally-relevant financial education, and asset building programs to achieve its mission. The organization's particular focus on home ownership stems from a philosophy which roots itself within the organization and every aspect of its work. This philosophy, known as, *Kahua Waiwai* espouses the basic philosophy of "A Sense of Place." The home is viewed as a foundation (Kahua). Upon this foundation is built the family's spiritual values, teachings, and cultural traditions (Waiwai). It is the spiritual value of the home and its surroundings that provides stability and the opportunity for families to build a secure future. Opportunities that help stabilize family life help to create a more stable community. Thus, it can be said that home ownership encompasses more than just the purchase of a house - it is an investment in the future. A strong foundation, if built properly, will serve generations to come.

NAHASDA Funding

HCA has provided services for more than six years under grants and contracts with the State Department of Hawaiian Homelands (DHHL) and as a sub-recipient (under DHHL) of HUD Native Hawaiian Block Grant (NHBG) funds made possible through the Native American Housing Assistance and Self-Determination Act (NAHASDA) of 1996. With support of NAHASDA funding HCA has:

(1) Established itself as the largest provider of homebuyer and financial education services and products for Native Hawaiian families statewide;
(2) Leveraged funding from local, state, and national sources to enhance community development of Hawaiian Home Lands;
(3) Secured partnerships to increase the rate of homeownership for Hawaiian Home Lands Lessees; and
(4) Enhanced its capacity to create a continuum of service in the realm of housing counseling with the goal of providing Native Hawaiian families with the necessary education and tools to move from the beach to the biggest investment in their lifetime – a home.

Established itself as the largest provider of homebuyer and financial education services and products for Native Hawaiian families statewide. With NAHASDA funding, HCA has maintained itself as the largest provider of homebuyer education and counseling services under the DHHL and Office of Hawaiian Affairs Home Ownership Assistance (HOAP) program. In particular, NAHASDA funding has allowed for delivery of homebuyer education workshops, individualized counseling, matched savings for down payment and closing costs, and mortgage origination and loan packaging services from its 4 County-based offices on Oahu, Maui, Big Island, and Kauai. Since 2006, HCA has assisted Native Hawaiian families with mortgage financing in the following Hawaiian Home Lands Developments:

- Lanai
- Kekaha
- Villages of Lealii
- Kaupea Phaes I, II, and III
- Waiehu Kou IV
- Hoolehua
- Kanehili Phases I and II

Leveraged funding from local, state, and national sources to enhance community development of Hawaiian Home Lands. The organization has leveraged funding for its work in providing financial education services and products from two of the largest national rural community development organizations—Rural Community Assistance Corporation and Rural LISC (Local Initiatives Support Corporation). HCA has also leveraged Federal Administration for Native Americans to expand its mortgage origination services and establish a youth financial education program that has served more than 930 Hawaii youth residing in low-income communities with age- and culturally-appropriate financial training.

Secured partnerships to increase the rate of homeownership for Hawaiian Home Lands Lessees. In 2008, HCA formed an exciting new partnership between HCL and Bank2 Native American Bank to increase access to mortgage capital for beneficiaries of the Hawaiian Homes Commission Act. The partnership allowed HCL to utilize NAHASDA funding to originate the section 184A Native Hawaiian Housing Loan Guarantee program; a mortgage product specifically designed for Native Hawaiians on Hawaiian Home Lands. In addition, NAHASDA funding has allowed HCA the opportunity to work with families in a variety of contexts, including through self-help and private developers, county housing agencies, DHHL, and special populations such as the Kalapana community displaced by Kilauea lava flows and Niihau immigrants on Kauai.

Enhanced its capacity to create a continuum of service in the realm of housing counseling with the goal of providing Native Hawaiian families with the necessary education and tools to move from the beach to the biggest investment in their lifetime – a home. NAHASDA funding has been a primary source of building the capacity of HCA to expand its services to address the diverse housing needs of our Native Hawaiian families. In particular, the ongoing housing crisis has led to the organization developing foreclosure prevention, youth and family financial education, and rental housing and homeless services programs over the course of the last 4 years. With a intimate understanding of our communities, HCA is not only able to see the various needs of communities, but also potential solutions that can be brought together in a comprehensive service delivery model to increase the rates of families securing and sustaining permanent housing.

Program Model

Program Areas

HCA has two program areas - financial education services and community lending - that drive the organization's comprehensive approach to achieving its mission.

Financial Education Services	Hawaii Community Lending
Homebuyer and Financial Education Workshops	Loan Packaging
Individualized Counseling (Renter, Pre-/Post-Purchase, Foreclosure Prevention)	Micro-Loans
Training and Technical Assistance	Asset Building Programs

Homebuyer and Financial Education Workshops

HCA's homebuyer and financial education workshops seek to engage the entire family in the home buying process in a culturally-appropriate manner. The 1-day, 8-hour workshops cover lessons on household economics, family values and savings goals, buying versus renting a home, money management, credit and credit reports, qualifying for a mortgage, the home buying process, and surviving a financial crisis. The workshops are provided for free every month in underserved, rural communities on Oahu, Maui, Kauai, and Hawaii Island. The workshops regularly feature local credit unions, insurance providers, and other partners offering financial products specific to the needs of our families.

Individualized Counseling

HCA encourages individuals who attend its homebuyer and financial education workshops to sign up for free individualized housing counseling. In 2011, the average DHHL homebuyer took part in 5.08 hours of individualized pre-purchase counseling and 2.95 hours of post-purchase counseling. As required by HUD, HCA counselors follow a defined quality control process when engaging families in the sessions which includes (1) review of the household budget, (2) completion of a financial analysis, (3) development or review of a customized financial action plan, and (4) referral to appropriate asset building services and products to address the client's diverse housing needs.

Loan Packaging

With 10 years experience providing loan services on Hawaiian Home Lands, HCA's lending program, HCL, has a proven track record of assisting families achieve the dream of homeownership. Since the program was established, HCL has originated more than 5x

in purchase and refinance mortgage loans. Currently, HCA provides loan packaging services for USDA 502 Direct Loans to assist homebuyers enrolled in self-help projects on Hawaiian Home Lands.

Micro-Loan Products

Through the HCL program, the organization offers secured Credit Builder micro-loans to low-income individuals to help improve credit and build savings. The secured loans are low-principal and have fixed interest rates with repayment periods ranging from 6-24 months. Though a technically a loan product, the Credit Builder micro-loans function more like "forced savings" vehicles in that HCA provides the collateral without actually loaning the money. Once a program participant "re-pays" their loan in-full they not only improve their credit but they also receive their money back, minus the interest which goes to serve the next family with a micro-loan.

Asset Building Programs

HCA implements various asset building programs to further its mission in building the economic self-sufficiency of individuals and families through home ownership. In particular, HCA refers clients to the Hawaii Family Finance Project's Hawaii Individual Development Account administered by the Council for Native Hawaiian Advancement (CNHA). HIDA offers Hawaiian homebuyers a 6:1 match on savings up to $2,500 for a total of $17,500 to cover down payment and closing costs for homes on or off Hawaiian Home Lands.

HCA also administers its own matched saving programs. Its Youth MATCH Savings program provides youth, 13-24 with a 3:1 match on savings up to $100 for purchase of a long-term goal related to job/career training, housing, education, or small business development. Its Renters MATCH Savings program provides homeless individuals with up to a 5:1 match on savings up to $500 to secure and sustain rental housing. The programs are modeled after the Homestead Individual Development Account program, HCA established in 2007 in partnership with CNHA and DHHL.

Finally, HCA partners with CNHA to offer working families and individuals with free tax preparation to access Child and Earned Income Tax Credits, the largest anti-poverty program administered by the Federal government, yet the most underutilized. Additional referrals are made to self-help housing opportunities, free life insurance through Mass Mutual, and savings accounts with local banks and credit unions.

Program Results

Homebuyer and Financial Education

HCA has assisted more than 700 families realize the dream of homeownership. In 11 years of operation, HCA has provided homebuyer education and individualized counseling to more than 8,000 prospective homebuyers.

More specifically, between Fiscal Years 2007 and 2011, HCA trained 3,465 individuals through its homebuyer and financial education workshops and engaged 2,282 individuals in credit counseling (see Table below for more information). Clients who attended HCA workshops and took part in 18-24 months of individualized credit counseling (1) identified savings goals, (2) increased their use of budgeting tools, and (3) increased their knowledge of how to read credit reports and improve their credit scores.

As the foreclosure crisis started to have significant impacts on our Hawaii families in 2008, HCA launched a campaign to promote its foreclosure mitigation services followed by a pilot project in 2010 to serve homeless families living in transitional shelters with high rates of Native Hawaiians. The campaign and project have resulted in HCA expanding its services to all low-income communities across the state.

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
Homebuyer Education Workshops Held	46	56	47	24	51
Families graduated from homebuyer workshops	787	682	537	827	632
Families engaged in homeless/rental counseling	-	-	-	-	148
Families engaged in pre-purchase counseling	572	406	417	497	390
Families engaged in post-purchase counseling	-	40	97	120	51
% of families served with low- or very-low incomes	50%	64%	72%	40%	66%
% of families served who were Native Hawaiian	85%	90%	78%	67%	61%

Between Fiscal Years 2007 and 2010, HCA clients who received a minimum of 8 hours of homebuyer and financial education training and participated in individualized credit counseling over a period of 18-24 months:

- Improved their credit scores by 101 points from 540 to 641; and
- Decreased their debt by $5,012;
- Increased their savings by $7,003.

In Fiscal Year 2011, HCA clients who received a minimum of 8 hours of homebuyer and financial education training and participated in at least 5 hours of individualized credit counseling over the 12-month period:

- Improved their credit scores by 32 points;
- Decreased their debt-to-income ratio by 6 points from 34% to 28% ; and
- Increased their savings by $4,904.60

Mortgage Origination and Loan Packaging

HCL was established as the state's first non-profit mortgage broker. Net revenues earned through the program support HCA's statewide homebuyer and financial education programs so they can be provided for free.

Since inception, HCL has provided more than $123 million in mortgage loan originations. Of the mortgage loans originated:

- 90% have been made to families on Hawaiian Home Lands;
- 35% have been made to First-Time Homebuyers; and
- 42% have been made to low- or moderate-income families.

The following Table provides an overview of the success of HCL between Fiscal Years 2007 and 2010.

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
Amount ($) of Mortgage Loans Provided	$14.5 million	$16 million	$6.4 million	$23.5 million
% of Loans to First-Time Homebuyers	25%	27%	28%	66%
% of Loans to Families on Hawaiian Home Lands	67%	79%	89%	99%
Average Sales Price of Home	$263,015	$190,664	$299,818	$258,242

Today, HCL commits itself to a vision of providing access to capital to those most in need through micro-loan products and loan packaging services. The housing needs of our Native Hawaiian families are diverse, allowing this vision to best address those needs with flexibility, innovation, and community guidance.

Match Savings for Down Payment and Closing Costs

The program allowed Hawaiian Home Lands Undivided Interest Lessees to enroll for a maximum 24 months with a requirement of completing homebuyer education training and individualized counseling to receive a 3:1 match on savings up to $2,500 to cover down payment and closing costs. Overall, 19 families graduated from the program, saving a total of $52,372.04. 9 families who were unable to close on their loans during the program period were referred to CNHA's new Hawaii Family Finance Project HIDA program (see Table below for more information).

Clients	Number	Amount Saved/Family	Collective Savings
Referred to new HIDA	9	$1,811.70	$16,305.31
Graduated	19	$2,909.56	$52,372.04
		OVERALL SAVINGS	$68,677.35

The results of the program confirm that low-income families enrolled in the program:

- built long-term savings habits and decreased unnecessary spending over time;
- can and will save when properly incentivized, and;
- are more likely to save above the program's maximum match savings amount of $2500 when they are simultaneously engaged in individualized financial counseling.

Potential Opportunities

Diverse Housing Needs

NAHASDA funding has been instrumental in helping our Native Hawaiian families achieve economic self-sufficiency through homeownership. With the ongoing economic and housing crises, we have an extraordinary opportunity to dedicate these funds to the address the diverse housing needs of our families and promote self-determination through the establishment of a comprehensive work plan to not only assist our first-time homebuyers, but also the hard working families forced to live on the beach, multi-generational households renting together to offset extremely high housing costs, and Beneficiaries aspiring to build a foundation for wealth through aquaculture, agriculture, ranching, and business development.

With this goal in mind, potential opportunities for NAHASDA funding may include:

- Development of affordable transitional, rental, rent-to-own, multi-family, and self-help housing units to structure a broad pathway for our families to achieve and sustain the dream of homeownership that is in-line with our cultural values and traditions;
- Increasing opportunities for Native Hawaiian youth, their families, and their grandparents to achieve and sustain economic self-sufficiency through homeownership on aquaculture, agriculture, and pastoral lots located on Hawaiian Home Lands;
- Implementation of loan products by local CDFIs to further assist Native Hawaiian families overcome barriers to accessing credit necessary to become financially qualified to secure and sustain permanent housing and obtain financing for home purchase; and
- Leveraging of Local, State, and Federal Resources dedicated to increasing and sustaining homeownership while simultaneously promoting self-determination through implementation of local food and energy initiatives. In particular:
    - ***National Mortgage Settlement:*** Approximately $72 million dedicated to Hawaii homeowners for principal reduction, refinancing, one-time cash payment, public education campaign, and HUD approved housing education and counseling to prevent foreclosure.
    - ***Hawaii Family Finance Project:*** $3.1 million pilot project funded by the US Department of Treasury, administered by the Council for Native Hawaiian Advancement, and delivered by HUD housing counseling agencies to increase the homeownership rates of low- and moderate-income Hawaii families through the delivery of free homebuyer education, individualized counseling, tax preparation assistance, and matched savings for down payment, closing costs, and debt reduction.
    - ***Local Food and Energy Initiatives:*** The Hawaii State Department of Business, Economic Development, and Tourism currently administers a fund dedicated to the implementation of local food and energy initiatives. The fund has been established through a $1.05 retention fee on oil companies for every barrel of oil imported into Hawaii.

Summary

Conclusion

HCA's Homebuyer and Financial Education Program Report highlights the impacts of the organization's homebuyer and financial education program during the Fiscal Years of 2007 and 2011. The organization's comprehensive service delivery model was able to be created and implemented with funding from DHHL and NAHASDA as well as Rural Community Assistance Corporation and Rural LISC.

NAHASDA funding has assisted HCA to:

(1) Established itself as the largest provider of homebuyer and financial education services and products for Native Hawaiian families statewide;
(2) Leverage funding from local, state, and national sources to enhance community development of Hawaiian Home Lands;
(3) Secure partnerships to increase the rate of homeownership for Hawaiian Home Lands Lessees; and
(4) Enhance its capacity to create a continuum of service in the realm of housing counseling with the goal of providing Native Hawaiian families with the necessary education and tools to move from the beach to the biggest investment in their lifetime – a home.

The following key program outcomes would not have been possible without NAHASDA funding as a foundational piece of implementing the organization's Homebuyer and Financial Education Program:

- 3,465 individuals graduated homebuyer and financial education workshops;
- 2,282 individuals received credit counseling;
- Individuals who completed at least 8 hours of homebuyer education training and received credit counseling over a 18-24 month period (1) improved their credit scores by 101 points from 540 to 641, (2) decreased their debt by $5,012, and (3) increased their savings by $7,003;
- $123 million in mortgage loans have been made to serve Native Hawaiian families through Hawaii Community Lending; and
- 28 Native Hawaiian families collectively saved $68,677.35 toward down payment and closing costs in the Homestead Individual Development Account Program.

To address the diverse housing needs of our Native Hawaiian people, potential opportunities for NAHASDA funding may include:

- Development of affordable transitional, rental, rent-to-own, multi-family, and self-help housing units to structure a broad pathway for our families to achieve

and sustain the dream of homeownership that is in-line with our cultural values and traditions;

- Increasing opportunities for Native Hawaiian youth, their families, and their grandparents to achieve and sustain economic self-sufficiency through homeownership on aquaculture, agriculture, and pastoral lots located on Hawaiian Home Lands;
- Implementation of loan products by local CDFIs to further assist Native Hawaiian families overcome barriers to accessing credit necessary to become financially qualified to secure and sustain permanent housing and obtain financing for home purchase; and
- Leveraging of Local, State, and Federal Resources dedicated to increasing and sustaining homeownership while simultaneously promoting self-determination through implementation of local food and energy initiatives.

The CHAIRMAN. Mahalo nui, Kehau, for your testimony and for your support as well of the bill, S. 65.

And for all of you, your commendation and the need of NAHASDA, and how important NAHASDA is to the Hawaiian Home Lands programs. So mahalo nui loa for that.

First, Kali, I want to ask you. You served as Chairman for the state Department of Hawaiian Home Lands, as you mentioned, before NAHASDA was enacted.

In your view, how important is Title VIII of NAHASDA, and accessibility of Section 184A loans to the Department's ability to meet the federal mandate to return Native Hawaiians back to the land?

Mr. WATSON. Senator, thank you for the question.

I think without a doubt, the ability to obtain financing, especially as you relate it to some of the other loan products like the HUD 247, some of the others, as well as the cost of those, versus the process used under the NAHASDA approach is very critical, because just those few dollars that you can save by using one loan product versus the other, and then what made or broke the ability of that family to get a loan, to get a house, to have a place for their family, I think that without a doubt all these loan products are important.

We need to continue the use of this particular loan package as provided under NAHASDA. I would say that the refinancing portion, which allows the families to get better, I guess, monthly payments as a result is also critical, because it frees up funds for other things that the families might need to do, such as get an education, support the kids, feed the family.

So without a doubt, Senator, I think that with the continuation of this loan product, as well as its reauthorization, it will make an impact, a good impact. Thank you.

The CHAIRMAN. Thank you very much, Kali.

Robin, does the council have any additional policy or recommendations that would strengthen Native Hawaiian communities, or enhance the state Department of Hawaiian Home Lands' ability to carry out the purpose of the Hawaiian Home Lands Commission Act?

Ms. DANNER. Thank you for the question.

Absolutely, Senator. You know I'm never at a loss for any policy recommendations.

Two things come to mind when you say how do we advance forward. The first decade, Department of Hawaiian Home Lands and the beneficiary community has spent our time figuring out what is this NAHASDA. First decade in terms of reporting, and getting to know HUD. Getting to know a whole new division at HUD called ONAP, that most beneficiaries and most officials at DDHL didn't know existed.

So it's been a good decade for learning for the Department, and engaging with HUD, and then implementing consultation policies.

So I would hope that the next decade, and with the influence of the Committee to encourage that beyond the current administration HUD and DHHL, we have an awesome Deputy Assistant Rodger Boyd who gets us. He fully embraces the parity issues that we face.

We have an awesome Deputy Director at Hawaiian Home Lands that for ten years has worked with us. So we have really knowledgeable officials right now have in the Obama Administration and the Abercrombie Administration.

What I would like to see solidified beyond those administrations, the focus on empowerment and capacity building being squarely invested in the people, that the next ten years be spent implementing that self-determination in the homestead leaders and the organizations beyond the state government officials and employees.

So that what we have known over the last ten or 15 years, I think I'm on my eighth chairman of Hawaiian Homes, Kali, you were my first. The administrations will come and go, but it's the land and the people that end up remaining.

And so I think my advice would be for the next decade for state government, for Federal Government to join together to now implement stronger the self-determination policies of NAHASDA, so that the beneficiary leaders can come to the table, join and bring their awesome solutions and we can move more quickly to catch up on the 80 years that we have not had resources.

And then my second and last policy recommendation, Mr. Chairman, I know it has a small budgetary impact, but perhaps for the record I would like to say it. I hope that we can work together to get parity with HUD 184 in one more step, the final parity issue would be to extend the same language that Indian Country has for their 184 program, which is the allowance of that mortgage product on or near trust lands. That would be an extraordinary parity issue that would not only enhance Hawaiian Home Lands, but truly enhance the State of Hawaii across the state fee simple and non-fee simple land.

So I put that in answer, Mr. Chairman, for the record, perhaps at a future time that we can work on that policy issue.

The CHAIRMAN. Thank you very much, Robin, for your mana'o and your response.

Kehau, first, I want to commend HCA for its commitment to financial literacy, as well as credit counseling that you do. Financial literacy is key, really key to empowering our committees to lifting themselves out of poverty.

I notice in your testimony that people have completed your training and participated in your counseling services on average moved

their credit scores over 100 points from 540 to 641. That's tremendous.

Now, can you give me concrete examples of what moving a credit score from 540 to 641 means to the average individual in terms of expanded options?

Ms. FILIMOEATU. To many of those people it meant that you now could afford to get that home. And for many of our people that we have worked with, it was something that they did not really quite understand. And we realize for our people to understand finances, we had to take it to a different degree.

We knew that Hawaiians historically knew how to handle and take care of everything. You know, we used, one of our topics was the baby luau that everybody knew came one year, oh, you going have big luau. And that no matter how poor or rich you were, you always had the necessary components to get there.

They thought that having to save money up for that was going to be a hard thing to do. And part of what we needed to let them know that saving was all about how you spend. And that you know how we all get together and everybody go and gather little by little. You don't go get all the opihi one time, but you go month after month, so that by the time it came one year old, you had enough for everyone.

When our people could address those kinds of issues at a more familiar level, that, oh, the light went on, and they knew how to follow through. We found that very prevalent as well with youth people that we had NAHASDA funding to come up with our youth curriculum now. I think that is going to be very pivotal for our people in getting their dealings to become more self-sufficient and self-determining.

I think we have been able to use these fundings to teach, or to at least make them aware of how very akamai they were in the beginning. It's just the context and how we speak and how we talk and the terms we use about financing. A lot of Hawaiians they kind of go with that, but if you can bring them forward and give them the tools, they certainly can make good use of that.

So we mahalo you and we mahalo the Native Americans for this act that they started, and we have been now able to take advantage of.

The CHAIRMAN. Mahalo, thank you for your mana'o.

Now I would like to ask Congresswoman Hanabusa for any comments or questions she may have.

Ms. HANABUSA. Thank you, Senator.

Let's begin with you, Kali. The example you gave was very moving and you said that it was using NAHASDA funding.

Were you Director at that time? Because you predate the year 2000 when it was originally Title VIII that was authorized.

Mr. WATSON. No, I wasn't the Director at that time. After I left, I went over to OHA and worked on the ceded land settlement. That was way back.

Ms. HANABUSA. I remember.

Mr. WATSON. It was very frustrating, but I'm so happy to see the thing has finally been settled. After that one-year stint there, which was an interesting experience, but in any event, we started a non-profit, and we got some money from the Federal Home Loan

Bank to fund this replacement home project involving 25. And it is one of the most challenging projects I've ever worked on in my life. It's also one of the most rewarding. We've had some really interesting experiences.

I remember one instance where I was talking on the phone with this homesteader from Papakolea who was standing in her garage. And she started screaming because her house fell down.

You know, a lot of the other homesteaders we work with, their houses had either collapsed or in terrible disrepair.

When I was a Director we did a survey and we found over four to 500 houses throughout the homestead areas needing that kind of replacement, not just repairs but replacements. So fortunately the Department was willing to work with our non-profit, provided us funding through the NAHASDA funding, which we used to replace these homes. We partnered up with a lot of other organizations, but that was a real good example, I think, where like I'm saying, NAHASDA is not just about money, it's about people. And I think that has to be kept in mind when you think or talk about and try to justify this particular funding source.

Ms. HANABUSA. Thank you. I just want to say, Kali, as somebody that was there when you were negotiating the settlement, that I thought you had a very good settlement. Too bad it didn't go through, but people should know the hard work and the work that you put into that.

Robin, you know, as always, we are looking at very similar parts of the bill. And I was also intrigued by the self-determination aspect of it. But as you know, in that NAHASDA statute, the reference in the Congressional finding basically talks about self-determination in terms of federal assistance to meet these responsibilities be provided in a manner that recognizes the right of Indian self-determination and Tribal self-governance, by making such assistance available directly to the Indian Tribes, the Tribally-designated entity that the authority similar to those accorded Indian Tribes.

In addition to that, as you know, under Section subtitle B of the Section 2 of the NAHASDA statute talks about self-determine housing activities for Tribal communities. And it goes on in how it determines that self-determination. Self-determination is such a term of art for us over all of these years, especially with Senator Akaka's bill, that it takes on different nuances.

So when you reference the self-determination portion that you would like to see incorporated and applied to Native Hawaiians, are you looking at it in terms of being in line with like the preamble statement, including Native Hawaiians, and subtitle B, which begins in Section 201 of the NAHASDA statute?

Ms. DANNER. Thank you, Congresswoman. I have been privileged in 1995, 1994 during those years, I was the equivalent of the DHHL chairman for a large multi-Tribal housing authority. And so I had the privilege of working with Jackie Johnson and other leaders around the country in putting together the original 1996 NAHASDA.

Self-determination was the starting point of our conceptualizing that legislation in making sure that it was self-governing by the people. So for Hawaiians, my interpretation of that is that we have

a very unique relationship in that we have a double government layer, Federal Government and state government that passes through NAHASDA, we named DHHL when we did the amendment in 2000 and TDHE, Tribally Designated Housing Entity, because it was the most efficient and proper thing to do given the historical relationship for the state government to have to facilitate and administer.

Then you can do sub-recipients. So the comparables to the 1996 NAHASDA for Indian Country and Alaska Natives, is the homestead associations. They're long-time organizations that are democratically elected. That is what I'm talking about in terms of the application of self-determination policy, the federal policies, capacity building of empowerment. We need to take our next ten years of investing in those homestead associations, those homestead leaders so that they become the sub-recipient TDHE's and doing the types of housing that Kali is talking about, and that Kehau is working on, but more importantly so that the homestead leadership does not go away, has the opportunity to gain incredible networking and insight through their native counterparts on the continent by engaging in the Native American Housing Coalition on the continent, and working with Indian Country directly.

My view is that the state government had to spend the first decade figuring out compliance and what is this NAHASDA. And now, like HUD, the state and the homestead associations to spend the next ten years implementing the big SD in NAHASDA, and investing in the actual collective people themselves.

I am absolutely not uncomfortable comparing the homestead association to TDHE that is a pueblo that might be in New Mexico or one of the colonials in California, because the homestead associations, some of them are 30 years old. These are not pop-up, start-up, self-governing organizations. They have long tradition and protocols. And they are laser-beam focused. No matter what's going on around them or in the state, they are laser-beamed focused on their homestead areas, just as a pueblo or a Tribe is laser-beam focused.

So, yes, I am suggesting that the next ten years we get our arms around, our heads around together state government, Federal Government and the community based organizations and homesteads start to get our arms around how and what the federal policies of self-determination are intended for.

Ms. HANABUSA. I don't see former Representative Mike Kahikina here, but when Mike was in the House, we actually passed, it ended up being a Senate bill I introduced, which basically afforded the self-determination—well, actually a role more for homestead communities. And it went up as an amendment to the Hawaiian Homes Commission Act. As you know, it fell into a black hole somewhere and never went any further.

It seems like, that if it's amended into the NAHASDA, it would accomplish exactly what, sort of along the same lines that we're looking at to try and give the homestead communities a more sense of self-determination, and that's one of the reasons why I wanted to clarify. But I understand clearly what you're saying, and I appreciate it, because I do believe that that is exactly where we must go.

Kehau, you do amazing work, and I don't really have a question other than to tell you that I know that the major success is in the refocusing, and I love the baby luau analogy, because that's exactly what has always tripped up our families. And that's another reason why I think the provision of this bill, the refinancing aspect of it is also so critical, and a major component.

But I would just like to end by saying that as you are all aware, because Senator has been there and Senator Inouye has also been able to—they have both been able to massage the budget, that though we lost authorization in 2004, that it has been able to continue. And in 2011 it was a clear example of what can happen without the authorization. And that is that I could not amend the appropriation measure to put in, back in the funding for Native Hawaiians under NAHASDA, and the reason being very simply because the way it works up there, our rules prohibit it if we don't have the authorization. So until then, you're at the mercy of the appropriators.

I hope that as part of this record, the real significance of the authorization is felt by everyone here and whoever you may know or whatever letters you can get out there, it is absolutely critical, because they don't have to do it.

I share your thoughts, Kehau. Senator Akaka has been such an amazing advocate, and as he retires and you folks get him home, assuming I don't come home with him, because it depends, it's really very important. So thank you all, very much.

I'll turn this back to the Senator.

The CHAIRMAN. Mahalo nui, Colleen.

My last question to the panel is you discuss at length the federal trust responsibility to Native Hawaiians. As community advocates and service providers, what more needs to be done to better meet the federal trust responsibility and advance the federal policy of self-determination and self-governance where Native Hawaiian people are concerned, looking at the history that we have until now in Congress, self-governance seems to be one of the final steps in bringing the Native Hawaiians indigenous people together from Prince Kuhio's time of getting them homes. Many organizations coming together to try to bring them together in spirit. And the last thing that need to be done is government-to-government relationships. And that's what we're seeking to do.

My question to the panel is what I just asked. Comments, Robin?

Ms. DANNER. Senator and Congresswoman, as a member of the Native Hawaiian Roll Commission that was passed by the Hawaii Legislature, Act 195, I think what that portion has been done, a step forward for the state to embrace and to say to the world and especially to Congress to the State of Hawaii it fully embraces a government-to-government relationship. I think there are three things that are next on the next generation that you pass the torch to, and that first and foremost is for this year to pass the Native Hawaiian Government Reorganization Act, even in a streamlined version, especially due to the collaboration with our Hawaii State Legislators.

So passage of government-to-government recognition, as you have taught us, we are federally recognized people, 150 statutes are based on our Native status. But the unfinished business to ad-

vance the trust relationship is for the Federal Government to once and for all deal with us and address us in a government-to-government fashion.

The second area that I think is not as difficult to do on an administrative level would be to have our Hawaii Congressional delegation help and encourage the Obama Administration and officials to give flexibility to terrific officials like Deputy Assistant Secretary Rodger Boyd to have a more direct federal relationship with the people versus having a federal-to-state relationship. That has been small time, but necessary, but now we need to advance the federal relationship between HUD, between Department of Energy, Department of Interior, Office of Native Hawaiian Relations needs to come directly and start to engage so that we can learn about the federal trust relationship and that they, in their agencies, can learn, so that we don't have this federal-to-state relationship get ingrained.

Third, I think that one of the most powerful ways that our Hawaii Congressional delegation in partnership with Alaska and New Mexico and the other 35 states that have Native peoples is to continue doing, as Director Tuell has encouraged us to do over the last year, is to remind those legislators that we are the third Native peoples, and when there is an Indian energy bill, or when there is an education bill, that means Native energy, that means Native education. Just as your staff worked on the Native Class Act, and had Native Hawaiians included in it. We have got to keep educating and continuing that mantra that with trust lands, our Native solutions are very similar, if not exactly the same, and so to extend parity I think, Senator, you hit it on the head that word parity is a lifelong journey that the next generation of Hawaiian advocates, we will teach them to come up and to continue that story.

The CHAIRMAN. Kali.

Mr. WATSON. Senator, I think I'm more of a developer mentality. There's no doubt about the need for the recognition of government-to-government between the groups. But I think from a pragmatic standpoint, in developments, I think some of the difficulties have been because of the limitation on funding, limitation and changes that are coming about, and the different federal departments.

For example, rural development, with the changes in the populations, for example, Kapolei, they're going to lose their designation as rural area that would qualify for a lot of different funding that is available through that agency.

So I think we need to change the laws at the federal level whereby instead of designating a rural area, rather designate it as trust lands that are available through these different departments.

Similarly, with respect to the rural utilities under RD, it's been very difficult in the existing structure to access some of the funding or loan products. For example, the ones that Anahola is using in partnership with KIUC to develop a ten and 12 megawatts PV farm. To try and access that fund, if you are not a rural utility entity versus a homestead association, it's almost impossible. So I think there needs to be an analysis of the existing legislation or laws to make changes that provide that accessibility, so that our people, through their homestead associations or other types of enti-

ties, can access the fundings to do the developments, the economic engines that will allow them to not only build and start businesses, but more importantly educate our own people. It's very, very critical.

I can go on and on about all the different federal laws that can be changed to help our people, but I think NAHASDA is a step. So we truly support and appreciate the work that you've done in the past and look forward to seeing you at home.

The CHAIRMAN. Aloha.

Kehau, do you have any comments on this question?

Ms. FILIMOEATU. I would agree with everything they have said so far, including na'i, we should take back the land maybe.

[Laughter.]

Ms. FILIMOEATU. I'm not sure how much we can leverage with that. But I know you're doing wonderful, and our wahine over there, mahalo.

The CHAIRMAN. Mahalo for your mana'o. It has been really great to hear from you. What you said for the record will be very, very important to what we're doing in Congress. So I want to thank you folks, mahalo nui loa for all of this.

I want to say thank you to the third panel, and extend mahalo to everyone for participating in today's hearing. Your mana'o helps building the record on the importance of U.S. Senate Bill 65, and demonstrates how it is an effective and necessary piece of meeting that trust responsibility to Native Hawaiian people.

Finally, I want to say a few words about my top legislative priority, U.S. Senate Bill 675, the Native Hawaiian Government Reorganization Act. I want to again thank the Hawaii delegation, because this bill has been important to all of us, and to Hawaii, and we continue to work together to move it forward. Native Hawaiians was mentioned the only federally recognized Native people without a government-to-government relationship with the United States. And we want to bring that parity forward. And my bill provides the Native Hawaiian people the same mechanisms of self-government, self-determination that other Native peoples currently enjoy under existing federal law. Its passage is long overdue, governmental parity for Native Hawaiians, American Indians and Alaska Natives, all of the first nations of the United States is pono, it's the right thing, and we'll bring that about with your support.

I will continue to work to ensure that the Native Hawaiian people have their right to self-governance honored.

So this is what we look forward to. I want to commend NAHASDA and HUD for your work in helping the country, and the people of our country out, and also the Native Hawaiians as well. And as you've heard from all of our witnesses, NAHASDA is very, very important to our future here in Hawaii.

I also want to thank my staff from the American Affairs, Indiana Affairs group here, both our Loretta Tuell and also our minority side, also mahalo for coming; and for the staff of Senator Inouye, Hanabusa, also Hirono for helping out with this hearing today from my staff as well.

I am happy at what has happened, and to tell you that in our Committee of Indian Affairs we've had good relationships with the minority side, and Rhonda Harjo has been a Deputy Staff Director

and is here representing that side as well for Senator Barrasso from Wyoming who is a Vice Chair of this Committee.

And my staff, I think you should know the names of them, Loretta Tuell, Lenna Aoki, Jade Danner and Christine Cardoza. And from my staff here in Hawaii Joan Ohashi, and Jesse and Keone and Daphne. And so to all of them, mahalo nui loa for your work in bringing this about.

But this has been an important area, and you've really helped us with the record, and that's important to us and our work in Congress.

And finally I want to say mahalo nui loa for the support you've given me in all of the years, and it has been a real privilege and an honor to represent you and the people of Hawaii of the United States of America, and really the rest of the world. And I thank God and ask for his blessings upon all of you, your families, your organizations, our great state and the governments here of council as well, and the United States of America.

We are so grateful for the opportunities we have had. So mahalo nui loa.

This hearing is adjourned.

[Whereupon, at 12:48 p.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF CHERYL A. CAUSLEY, CHAIRWOMAN, NATIONAL AMERICAN INDIAN HOUSING COUNCIL

Introduction

Dear Chairman Akaka, Vice Chairman Barrasso, and distinguished members of the Senate Committee on Indian Affairs. I am submitting this written statement in support of S. 65, the Hawaiian Homeownership Opportunity Act of 2011, on behalf of the National American Indian Housing Council (NAIHC). My name is Cheryl A. Causley and I am the Chairwoman of NAIHC, the only national, tribally-established non-profit organization dedicated to advancing housing, physical infrastructure, and economic and community development in Native American communities throughout the United States. I am also an enrolled member of the Bay Mills Indian Community in Brimley, Michigan, and the Executive Director of the Bay Mills Indian Housing Authority. I want to thank the Committee for the opportunity to submit written testimony in support of Hawaiian Homeownership Opportunity Act of 2011.

Background on the National American Indian Housing Council (NAIHC)

The NAIHC was founded in 1974 and has, for 38 years, served its members by: providing invaluable training and technical assistance (T/TA) to all Native Americans and their housing entities; providing information to Congress regarding the issues and challenges that Native American communities face in terms of housing, infrastructure, and community and economic development; and through working with key Federal agencies to address these important and, at times, vexing issues, and to help meet the challenges.

The membership of NAIHC is expansive, comprised of 271 members representing 463[1] tribes and tribal housing organizations and, since May 2008, the Department of Hawaiian Home Lands. (DHHL), the sole recipient of the Native Hawaiian Housing Block Grant (NHHBG) program and the entity responsible for carrying out affordable housing activities for low-income native Hawaiian families who are eligible to reside on the Hawaiian home lands. The primary goal of NAIHC is to support Native housing entities in their efforts to provide safe, decent, affordable, culturally appropriate housing for Native people, including native Hawaiians.

Brief Summary of the Problems Regarding Housing in native Hawaiian Communities

As this Committee knows, and as the Chairman is keenly aware, the Hawaiian home lands are located in various geographic areas of the islands, usually in rural areas, and a significant portion of the home lands contain topography that is problematic and costly for housing development. Like the remote locations of many Indian reservations on the mainland and in Alaska Native villages, there is a lack of basic infrastructure and economic development opportunities are difficult to identify and pursue on the native Hawaiian home lands.

The poverty rate in Indian country is exceedingly high at 25.3 percent.[2] These same conditions exist on the native Hawaiian home lands. The employment and economic development challenges exacerbate the housing situation just as they do in Indian Country. Native Hawaiians face some of the worst housing and living conditions in the country and the availability of affordable, adequate, safe housing falls far below that of the general U.S. population. In Hawaii, according the Census, 17.4

[1] There are approximately 566 federally-recognized Indian tribes and Alaska Native villages in the United States, all of which are eligible for membership in NAIHC. Other NAIHC members include state-recognized tribes eligible for housing assistance under the 1937 Housing Act and grandfathered in to the Native American Housing Assistance and Self-Determination Act of 1996, and the Department of Hawaiian Home Lands that administers the Native Hawaiian Housing Block grant.

[2] US Census Bureau, *American Indian and Alaska Native Heritage Month: November 2011. See http://www.census.gov.*

percent of native Hawaiians are below the poverty rate compared to 9.4 percent of the total population in Hawaii.

To further compound this problem, the cost of housing in Hawaii is inordinate. Hawaii ranks first in the United States for median home value at $560,200, compared to the national average of $197,600 according to data from the Census for 2008. In 1996, HUD issued a report indicating that native Hawaiians have the highest percentage of housing problems (49 percent) of any group in the United States. It is not an overstatement that native Hawaiians experience the worst housing conditions of any group in the State of Hawaii. They also make up approximately 30 percent of Hawaii's homeless population.

According the Department of Housing and Urban Development, 68 percent of low-income native Hawaiian households have a housing obstacle that includes such things as affordability, overcrowding, structural quality, and availability, or any combination of these housing issues. For very low-income native Hawaiian households (those whose income does not exceed 50 percent of area median income), the needs are more severe, with 75 percent of households in this category facing at least one of the housing obstacles identified above.

Conclusion and Recommendations

It is against this backdrop that the passage of S. 65, the Hawaiian Home Ownership Opportunity Act becomes so critically important. The Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) was amended in 2000 by the Hawaiian Homelands Homeownership Act of 2000. A new title was added to NAHASDA, Title VIII, Housing Assistance for Native Hawaiians, that authorized the Native Hawaiian Housing Block Grant (NHHBG) program to provide affordable housing opportunities and activities for low-income native Hawaiians eligible to reside on the Hawaiian home lands. S. 65 would amend Section 824 of NAHASDA to authorize appropriations for the NHHBG program through fiscal year (FY) 2015. NAIHC unequivocally supports this Section of S. 65.

NAHASDA was enacted to provide Native American communities with new and creative tools necessary to develop culturally appropriate, safe, decent, and affordable housing. One such tool is the Section 184A Loan Guarantees for Native Hawaiian Housing program, known as Section 184A. The Section 184A program was established by Section 514 of the American Homeownership and Economic Opportunity Act of 2000 (P.L. 106–569, approved December 27, 2000), amended the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13b). This program provides a 100 percent guarantee to lenders that make housing loans to native Hawaiian borrowers eligible to reside on the Hawaiian home lands.

Native Hawaiians eligible to reside on the Hawaiian home lands have historically had limited access to private mortgage capital, due in large measure because lenders were understandably reluctant to do business on land that cannot be encumbered or alienated, such as the home lands. The Hawaiian home lands are held in trust. This program offers lenders a 100 percent guarantee in the event of a default. This guarantee makes private financing of home mortgages by private financial institutions possible, which would otherwise not be feasible because of the unique legal status of Hawaiian home lands. Through this program, eligible native Hawaiians can obtain a mortgage with a market rate of interest to purchase and rehabilitate, or to construct a single family home on the Hawaiian home lands.

Section 3 of S. 65 would authorize this program through FY 2015 and make the program more flexible by including refinancing as a permanent eligible use of the guaranteed funds.

The 100 percent guarantee provides the incentive for private lenders to market loans to this traditionally underserved population. Private financing is used to cover construction or acquisition costs, while Federal dollars are used only to guarantee payment in the event of a default. Individual native Hawaiian families who are eligible to reside on the Hawaiian home lands, the (state) Department of Hawaiian Home Lands (DHHL), the Office of Hawaiian Affairs, or private nonprofit organizations experienced in the planning and development of affordable housing for native Hawaiians are all eligible Section 184A borrowers. NAIHC enthusiastically supports this amendment to the Housing and Community Development Act of 1992.

Section 4 of S. 65, would amend Title VI and Title VIII of NAHASDA to include the Department of Hawaiian Home Lands as an eligible entity to participate in the Federal guarantees for financing housing activities programs that tribes and tribal housing entities have participated in since NAHASDA was passed in 1996. Historically, as has been noted, private lenders and investors have been reluctant to do business in Indian Country or on native Hawaiian home lands for a variety of reasons, including remote locations, cumbersome procedures related to trust lands, and a simple lack of experience lending to this population.

Under the Title VI program, HUD can guarantee 95 percent of outstanding principal and interest on a loan made by a private lender to an IHBG recipient for affordable housing activities. Borrowers pledge a portion of their current and future IHBG funds as security for the repayment of the federally guaranteed financial obligation. The 95 percent guarantee has proven to be an incentive for lenders to get involved in the development of tribal housing. Section 4 of S. 65 would authorize the DHHL to secure a 95 percent guarantee loan based on a portion of the NHHBG to pursue eligible housing activities under the NHHBG program. Section 4 would also authorize the Title VI Federal Guarantees for Financing Tribal and Native Hawaiian Housing Activities programs through FY 2015. Including the NHHBG program activities as eligible under the native Hawaiian Housing programs is an important amendment to NAHASDA and NAIHC supports this measure without hesitation.

I wish to conclude this written testimony by thanking Chairman Akaka, Vice Chairman Barrasso, and all members of the Senate Committee on Indian Affairs, for letting us express our views and our aspirations. The path to a self-sustaining economy is not achievable without a robust housing sector and Native American housing conditions will not be improved without the necessary tools. NAIHC and its membership believe that S. 65, the Hawaiian Homeownership Opportunity Act, is an important tool to provide culturally relevant affordable housing for native Hawaiians. Native American housing programs are not just about constructing houses, they are about building sustainable Native American communities—communities where health and safety are a top priority and where education can thrive. Together, we can continue the important work of building vibrant Native American communities throughout this great country.

PREPARED STATEMENT OF CRAIG "BO" KAHUI, EXECUTIVE DIRECTOR, LA'I'OPUA 2020

Honorable Senator **Akaka**,

On behalf of the Village of La'i'opua and members of our Hawaiian homestead community, I submitting this letter in support Senate Bill- S.65 to "To reauthorize the programs of the Department of Housing and Urban Development for Housing Assistance for Native Hawaiians."

The Native American Housing Assistance and Self-Determination Act of 1996, aka NAHASDA, provide for housing opportunities that assist Native Hawaiians for homeownership with direct funding for Hawaiian home construction through the HUD 184, 184A and other loan programs.

In this down-economy, native Hawaiians home financing opportunities is strengthen by this legislation and *Title VI: Guaranteed Loans to Finance Tribal Community and Economic Development Activities* - (Sec. 601)-authorizes the HUD Secretary to make loan guarantees to finance housing activities on Indian reservations and on lands under the authority of the Department of Hawaiian Homes Lands.

While this legislation provide for housing opportunities for Native Hawaiians, community facilities are central to the fabric of our community development and sustainability. Our kupuna understood the value of the "Pu'uhonua" wherein a safe haven for protection of its members was central to its survival.

Our modern day "pu'uhonua" in the Villages of La'i'opua encompasses this vision and value. La'i'opua 2020 is a "model activity" under which La'i'opua 2020 could qualify for NAHASDA funding. Access to this funding is restricted to the HUD eligibility activities and guided by the *Average to Medium Income (AMI)* limits and the census block data. However, under this criteria La'i'opua 2020 does not qualify on this funding, and limits our capacity to bring to fruition our community facilities development, our *Pu'uhonua*. Therefore, we recommend your consideration to include in this legislation language to exempt Native Hawaiian Homelands Trust lands from the *Average to Medium Income (AMI)* limits and census block demographics to allow model activities such as community facilities development on homestead lands to occur.

We appreciate your consideration in this matter.

"E noho kaulike, i ma alulike kakou"; we are on common ground standing together.

Mahalo Nui,

Craig "Bo" Kahui

PREPARED STATEMENT OF HON. DON YOUNG, U.S. REPRESENTATIVE FROM ALASKA

Dear Chairman Akaka and Vice Chairman Barrasso,

Thank you for organizing the Legislative Field Hearing on S. 65/H.R. 2648, the Hawaiian Homeownership Act. I would like to submit the following letter in support of this legislation.

Homeownership is central to the American dream and one that has not been easily realized for many Native Americans. Because Native Hawaiians have an even more unique historical relationship with the State of Hawaii and Congress. This bill will help Native Hawaiian families and future generations become homeowners by reauthorizing critical federal programs.

In 1921 , Congress passed the Hawaiian Homes Commission Act (HHCA), which set aside land in trust throughout the state for Hawaiian individuals with at least 50 percent Native blood. The HHCA also created the Hawaiian Homes Commission, a federal entity to administer the trust.

When Hawaii became a state, it was given title to these lands. The Federal Government delegated administration to the state but retained the ability to enforce the trust and oversee the administration through reporting requirements and enforcement of HHCA. Because of this new responsibility the state created the Department of Hawaiian Homelands (DHHL) an agency that was created to replace the federal Hawaiian Homes Commission.

To assist with the mandate of HHCA, Title VIII of the Native American Housing Assistance and Self-Determination Act (NAHASDA) was enacted. Title VIII authorizes a housing program for low-income residents of Hawaiian Home Lands. DHHL housing projects are focused on homeownership rather than rental properties. Unfortunately, Title VIII funds do not provide adequate funding which is why the Hawaiian Homeownership Opportunity Act is necessary.

The Hawaiian Homeownership Opportunity Act would reauthorize programs within the Department of Housing and Urban Development that would provide loans for Native Hawaiians. Such loans would be used to construct, acquire, refinance, or rehabilitate homes located on Hawaiian Home lands.

On July 26, 2011 Representative Hirano, Representative Hanabusa, and I introduced H.R. 2648 the companion bill to S. 65 the Hawaiian Homeowner Opportunity Act. It is clear that this bi-partisan bill acknowledges the importance of enabling Hawaiian homeownership. I strongly support the passage of S. 65 and will continue to reach out to the Hawaiian delegation and other Members of Congress to see this bill advance.

PREPARED STATEMENT OF THE OFFICE OF HAWAIIAN AFFAIRS (OHA)

Aloha Committee Members. The Office of Hawaiian Affairs (OHA) thanks you for taking the time to conduct a legislative field hearing on April 13, 2012 on S. 65, The Hawaiian Homeownership Act of 2011. OHA is a unique, quasi-independent state agency established by the Hawai'i State Constitution and state statutes to better the conditions of Native Hawaiians (Hawai'i's indigenous people). Guided by nine trustees elected by the voters of Hawai'i, OHA advances the interests of Native Hawaiians and serves as a fiduciary for Native Hawaiian public trust funds and other resources.

One of the ten strategic results identified in OHA's strategic plan is to increase stability in housing for Native Hawaiians. Accordingly, OHA offers the following testimony in support of the Hawaiian Homeownership Act of 2011.

Native Hawaiians and Instability in Housing

Limited resources required Native Hawaiians to develop careful land and resource management practices to support individuals and society, as well as to maximize available resources. Houses were developed with great consideration for their purpose to both the individual and the community. During the period of the Mahele in the 19th century, land use and resource management dramatically changed the economic, political, and social landscape of Hawai'i. In less than fifty years, development that was focused on economic profits from commercial agriculture operations diminished Native Hawaiian control of lands. Traditional Native Hawaiian building practices, land use, and ownership were virtually eliminated. These changes fostered the displacement of Native Hawaiians from ancestral lands and contributed to the breakdown of traditional *kauhale* or social housing communities.

This legacy continues today. Over the past five years, Native Hawaiians have struggled with an unprecedented housing crisis. Growing numbers of homeless, limited affordable housing options, and difficult economic conditions are all contributing factors to housing instability.

Census data alone does not reveal the entire story when it comes to housing instability and Native Hawaiians. Census tracts that cover homestead parcels show only the successful homeowners that have been able to qualify for and obtain leases. However, the remaining beneficiaries who are not able to qualify for leases, and Native Hawaiians who are not eligible for homesteads, have a need for housing as well.

The definition of *housing instability* varies, but the term typically encompasses individuals who have difficulty paying rent, spend more than 50 percent of household income on housing, move frequently, live in overcrowded conditions, or "double up" with friends and relatives. Housing instability can be a risk factor for homelessness. (Cohen & Wardip, 2011.)

Limited affordable housing stock and insufficient income are key underlying causes of housing instability for Native Hawaiians. Honolulu is considered the most expensive metro area in the nation for renters, and the median income for Native Hawaiians does not keep pace with the median Fair Market Rent for Hawai'i. (National Low Income Housing Coalition, 2010.) The lack of affordable housing options and rising housing costs may push Native Hawaiians into a state of housing instability.

To support housing stability for Native Hawaiians, efforts must be made to raise Native Hawaiian income levels in order to enable Native Hawaiians to afford median home prices and rents. New affordable housing stock must also be created to meet the needs of the growing Native Hawaiian population. It is important to remember that stable, affordable housing has positive impacts on a myriad of quality of life indicators such as health, public safety, and family cohesion.

Significantly, Native Hawaiians are overrepresented in both the unsheltered and sheltered homeless populations of the State of Hawai'i. Over 2,000 people, or 29 percent of shelter services recipients, were Native Hawaiian. Of those who utilize outreach services, including persons living unsheltered in cars, parks or other public places, 27 percent identified themselves as Native Hawaiian or part Hawaiian. When heads of households were asked to identify the cause of their homelessness, more than half stated that they were unable to afford their rent. (University of Hawai'i Center on the Family, 2010.)

The Office of Hawaiian Affairs' Role

To promote systemic change in housing, OHA's strategic plan identifies as a strategic result the increase in housing stability for Native Hawaiians. OHA is accomplishing this goal by providing resources to housing and shelter projects and services such as financial literacy and homeowner education.

OHA has been a strong funding partner in a variety of areas that affect housing. Since 2004, OHA has provided over $8.5 million for housing and related services through its grants program, including:

- $3 million annually for 30 years to the Department of Hawaiian Home Lands as debt service for bond financing to help 20,950 Native Hawaiian applicants access affordable housing throughout the state;
- $1.5 million to establish a statewide revolving home loan with Habitat for Humanity to serve Native Hawaiians eligible for housing services;
- $3 million for the Governor's Homeless Initiative, a shelter on the leeward coast, and programs provided by partners including Catholic Charities Hawai'i, Family Promise of Hawai'i, and the United States Veterans Initiative; and
- Funding for financial skill building and for renovations and repairs with partners such as Hawaiian Community Assets, Nanakuli Housing Corporation, and Hale Kipa.

The Hawaiian Homeownership Act of 2011

The programs that will be extended by the passage of the Hawaiian Homeownership Act of 2011 play a crucial role in Hawai'i housing because they provide beneficiaries of the Department of Hawaiian Home Lands with access to mortgage products, housing development and related projects.

Significantly, passage of the Act would also effect a beneficial expansion of the 184A loan guarantee program to include refinancing. Most homeowners with a mortgage take refinancing for granted. However, mortgages for homesteaders are largely limited to the 184A program, and as the economy has worsened, many homesteaders have found themselves in an unforeseen gap because they do not have the ability to refinance. Passage of the Act rectifies this needless disparity between homesteaders and other homeowners.

Passage of the Act gives the Department of Hawaiian Home Lands access to the Title VI program, which allows the Department to leverage future block grant funds to finance affordable housing development. Affordable housing development in Hawai'i requires multiple financial partnerships to overcome the high cost of production. With limited access to state funding, the Title VI program gives Department of Hawaiian Home Lands an important tool to create stability in housing and be an attractive partner for the limited affordable housing development dollars in our state.

Given the block grant program, Hawai'i's share of Hawaiian Homeownership Act funds has consistently been the minimum amount available, despite the high level of need and cost of housing in Hawai'i. As the national economy recovers, we look forward to continued stability and an increase in the availability of Hawaiian Home-

ownership Act funds to Native Hawaiians beyond those that qualify for Department of Hawaiian Homelands products.

OHA supports S.65, The Hawaiian Homeownership Act of 2011, and its reaffirmation of the continuing trust relationship between the United States of America and Native Hawaiians. Thank you for the opportunity to comment.

PREPARED STATEMENT OF PAUL P. RICHARDS, PRESIDENT OF THE WAIMÃNALO HAWAIIAN HOMES ASSOCIATION (WHHA)

Honorable Senators Daniel K. Akaka, Sr. and Committee Member Daniel K. Inouye and Members of the Senate Committee on Indian Affairs, Aloha kakou!

Mahalo nui loa for the opportunity to submit written testimony regarding S.65 Hawaiian Homeownership Act of 2011 as a follow up to the previous legislative field hearing held here on O'ahu, Hawai'i.

My name is Paul P. Richards, President of the Waimãnalo Hawaiian Homes Association (WHHA) a Native Hawaiian Organization (NHO) and a federally recognized IRS 501c–3 non-profit entity representing 644 homestead household lessees and 81 na kupuna residing at Kulana Kauhale Maluhia O Na Kupuna located in Waimãnalo.

The residents of the Waimãnalo Hawaiian Homes Association (WHHA) sincerely appreciate your thoughtfulness and determination in amending the Native American Housing Assistance and Self-Determination Act (NAHASDA) as identified in S. 65 which authorizes the appropriations for housing assistance, loan guarantees for Native Hawaiian housing and eligibility of the Department of Hawaiian Home Lands (DHHL) for Title VI Loan Guarantees. These amendments will certainly open the opportunity for our Native Hawaiian population in preparing for homeownership and by taking advantage of programs offered through the Department of Housing and Urban Development (HUD).

Our Association has taken positive steps towards financial literacy and "practices" within out homestead 'ohana to ensure preparedness for homeownership begins within the "four walls of their existing homes." Furthermore, "education" is the focal and primary pursuit we have instilled within our membership and residents ensuring the future successes are and have been measured by the increase and level of skills, techniques and critical thinking progression. For this reason, we have seen an increasing multitude of our recent generation prepared for homeownership through the Department of Hawaiian Home Lands and others through private venues.

We strongly support S. 65, the intent and purposes proposed and hopefully the extension of these programs will continue beyond fiscal year 2015 or at minimum reauthorized for every five or ten fiscal years.

We may not agree with some of the testimonies given during the field hearing and was confused with respect to those which did not or were not familiar with the intent of this U.S. Congressional legislation.

However, we do believe there are independent, fully credentialed organizations and individuals besides those who were invited to testify that morning. Within our great state of Hawai'i, WHHA has continued to partnership and collaborate with these exceptional entities which have provided the highest quality of financial literacy, homeownership, individual and organization capacity building, debt and financial management services such organizations as HANO, HACBED, Office of Hawaiian Affairs (OHA)—Hiilei Aloha, NeighborWorks America and Hawaii Homeownership Center offering their programs and services, including independent contractors like Ms. Helen Wai, and Ms. Christine Vallez. We have included services provided by Alu Like, Inc. and Hawaii Technology Institute (HTI) whose community outreach and instructions helped to improve the level of employability of our homestead residents while increasing their potential towards homeownership.

Please ensure within the legislation of S. 65 an inclusion and support for such organizations and businesses such as these are readily accessible and given equal opportunity to extend and continue its outreach in the Native Hawaiian communities. Their records within our community has blessed multitudes of young progressive and education Native Hawaiians the occasion to pre-qualify for homeownership loans and the elimination or control of debt accumulation.

We "strongly support" S. 65 and extend our appreciation and "mahalo nui" to our Senators Akaka and Inouye for the thoughtfulness, inclusion and forethought for our Native Hawaiian population.

Our blessings and always best wishes for good fortune, health and prosperity be with you both along with your 'ohana, and fellow Senators of the Senate Committee on Indian Affairs (SCIA), staff and supporters.

PREPARED STATEMENT OF SAMSON L. BROWN, PRESIDENT, AUPUNI O HAWAI'I

Aloha Mr. Chairman and members of the Committee. Thank you for the opportunity to offer testimony on the subject matter on S. 65 and/or its predecessor S. 710 for the betterment of the native Hawaiians. I am a indigenous man, National Hawaiian, and a native Hawaiian. I am please to share our understanding in this litigation and exploration in the role of Congress in resolving this subject matter for the native Hawaiians. We are Aupuni O Hawai'i, a native Hawaiian organization whose narrative is for the betterment of native Hawaiians as ascribed in Public no. 34—67th congress, 42 STAT 108, Hawaiian Home Commission Act 1920, a statue at large of the United States of America, hence the law of the land under Admiralty Jurisdiction (HHCA).

The Homeownership Act of 2011 (S. 65) purports funding from the Native American Housing Assistance and Self-Determination Act (NAHASDA) under 25 U.S.C. 4191 et seq. to include the insertion of "or Department" after "tribe" for the taking of benefits from the tribes of Native Americans with the misclassification of a set mandate for the native Hawaiians Title 2, sec. 202 (7), HHCA to include in this bill. I am testifying before this committe on behalf of native Hawaiians whom receive unceasing marginalization for the basic fundamental subsistence by the State and U.S. Congressional Senators for the representation of the state of Hawai'i.

My testimony today makes a number of points: (1) A classification of tribe for the native Hawaiians and with the intention of "department" leaves one to believe that we are American Indians and we are a non-governmental institute with a compact trust (P.L. 86–3, Hawaii state admission act, sec. 4) that is operating in disarray. (2) The inability to constitute finances by this measure is inaccurate and incongruous in the marginalization of said compact. (3) The define classification of native Hawaiians and Native Hawaiians is an ongoing distinction for the state of Hawaii to articulate its purpose in the state of Hawaii and I will discuss these points in more detail.

1. A Classification of Tribe for the Native Hawaiians

The treaty of the Hawaiian Kingdom and the United States is still in existence in the HHCA for this committee to ignore is to be blatantly arrogate and capricious in its ongoing managerial duty, furthermore to be noted as a tribe is to change an established distinct cultural recognized by an international compact for the conditions of our indigenous culture, I object with the intent/insertion of "or Department" after "tribe" in this bill to change our compact (HHCA) in the marginalization of our benefits to coffers vs the native Hawaiians. Furthermore the deception of

2. The financial Marginalization of Our Compact

HHCA, Title 2, sec. 204 and 207, in conjunction with section 4 of the admission act and article 12 of the Hawaii State Constitution, we the native Hawaiians continue to see the benefits disseminated by coffers like (CHNA) for the exclusion of receiving the full amount versus paltry amounts of funding. We conclude that sec. 4 of the admission act (P.L. 86–3) on proceeds received by this section should be given to the native Hawaiians funds under the Hawaiian Home Commission ACT as ascribed in sec. 4 of the admission act (P.L. 86–3)

3. To Define a Class

HHCA, Title 2, sec. 201 (7) defines the term "Native Hawaiian" means any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian islands previous to 1778, whereas sec. 206 restricts the ability of the state's governor to manage and/or operate authority in respect to Hawaiian home lands. We also assert that within HHCA that holds Title 3, the Nationals of the Kingdom of Hawai'i is placated without Title 2, sec. 201 (7) in HHCA, therefore we are not apples in a grove orchard of oranges for we are the soil, minerals, and the bloodline to life for this quasi-state (oranges).

Conclusion

This measure will cause an increase in poverty for the dissemination of our race by means of filtered our sovereign rights and to input egregious mandates to circumvent the betterment of the condition of native Hawaiians on our land by an open door policy to all non-Native Hawaiians onto our federal compact with the continuation of filtering monies from NAHASDA to coffers of the state of Hawai'i to services away for the native Hawaiians. We can only conclude that a remedy of sort is by the court of your peers and on the reelection circuit should the true native voices is not heeded by this committee and congress. And like Wounded Knee, we will prevail by means of intersession with the organizations of communities (not S. 2212) and the U.S. Congress for the betterment of native Hawaiians. Thank you for the

opportunity to submit this testimony on behalf of all native Hawaiians-at-large before this Committee.

PREPARED STATEMENT OF SCOTTINA MALIA RUIS, RESOURCE MANAGEMENT SPECIALIST, DEPARTMENT OF HAWAIIAN HOME LANDS

Aloha mai kakou,

My name is Scottina Malia Ruis. I've spent the last 15 years serving Native Hawaiians through two Native Hawaiian Trusts: the Queen Lili'uokalani Children's Center and the Department of Hawaiian Home Lands. My expertise and comments below come from this service to my people and my continued commitment to the betterment of Native Hawaiians' socio-economic status, educational attainment and other elements of well being, to include improved living conditions, which will ultimately strengthen the Native Hawaiian people as a whole.

Prince Jonah Kuhio never intended to divide the Native Hawaiian people into the "haves" and "have-nots" when he initiated and ultimately got the Hawaiian Homes Commission Act (HHCA) passed through Congress in 1920. Yet, this critical piece of legislation does just that. In addition, the HHCA is the foundation upon which Native Hawaiians of a specified blood quantum, as defined by Congress and not by the Hawaiian people, are allotted/awarded homeownership opportunities through the Department of Hawaiian Home Lands (DHHL)—a State governed entity whose leadership changes far too frequently for any long term impacts to reach but a few Native Hawaiians. This further divides the "haves" from the "have-nots" with under 8,000 actual homes on Hawaiian Home Lands as of December 2010 and over 20,000 eligible Native Hawaiians (as defined by the HHCA) on the DHHL wait list as of the same period. At this rate, in 100 years (by 2020) only a mere 30 percent or less of eligible Native Hawaiians will have been provided with said homeownership opportunities. Needless to say there are another 50,000 DHHL eligible Native Hawaiians that are NOT on the DHHL wait list and at least another 100,000 Native Hawaiians who are not "Hawaiian enough" to be served by DHHL and who some purport to be served by the Office Of Hawaiian Affairs—another State entity that has historically leaned toward advocacy vs. programs. Clearly, the need for adequate, affordable, homeownership opportunities for all Native Hawaiians is far from being met.

With specific regard to NAHASDA, as authorized by Congress in 1996 and amended in 2000 to include Native Hawaiians—all I can say is—"Its about time". However, the fact that NAHASDA Title VIII (with specific regard to Native Hawaiians) has yet to be reauthorized since the original is a poor reflection on the original intent of the legislation. All other thoughts aside, I strongly urge the Senate Committee on Indian Affairs to do what ever is necessary to reauthorize Title VIII of NAHASDA and ensure a federal funding commitment to those eligible Native Hawaiians as defined by NAHASDA.

With specific regard to the reauthorization of 184A—the most critical elements that need to be considered are as follows:

- The use of the 184A for *Refinancing* of existing eligible homes, and
- The use of the 184A for *Construction financing with NO interest due and NO payment required until the home is completed*—realistically, it is impossible for a LOW–INCOME family to pay for rent AND mortgage simultaneously.

While there are elements of NAHASDA, HCCA, and services provided by DHHL and/or OHA that could be improved to better reach more Native Hawaiians and afford more Native Hawaiians the opportunity of homeownership, the most important thing at this juncture is the reauthorization of funding for NAHASDA Title VIII and the aforementioned inclusions to the language of 184A.

Thank you for the opportunity to submit this testimony. I am available for further discussion should the need arise.

O wau me ka ha'aha'a,

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. AKAKA TO RODGER J. BOYD

Dear Mr. Chairman:

Thank you for your letter of May 16, 2012, posing follow-up questions generated by the testimony I presented on behalf of the Department of Housing and Urban Development, Office of Native American Programs (ONAP), at the April 13, 2012, Senate Committee on Indian Affairs legislative field hearing on S.65, the Hawaiian Homeownership Act of 2011.

In the letter, you inquired about the Native Hawaiian housing needs' study and HUD's decision to conduct a household survey as part of that study. As you may recall, HUD originally did not plan on conducting a household survey in Hawaii due to financial constraints and the challenges inherent in trying to identify the correct population to survey. Instead, HUD developed an interview guide for the Department of Hawaiian Homelands (DHHL) staff and other advocacy organizations that work with native Hawaiians. This guide was provided to the DHHL and other participants at the Housing Needs Outreach Session held in 2011 for review and comment.

In response to community concerns and with the support of the Senate Appropriations Committee, HUD added a household survey, and consulted with the DHHL about the survey. HUD is now planning to conduct a household survey of individuals on the DHHL waiting list. The DHHL has assured the Department that it will allow HUD to have access to the list for the purposes of sampling. The actual survey instrument is currently being designed, and will be based on the household instrument developed for the mainland and Alaska that is currently in draft stage. The draft may be found at: http://www.huduser.org/portal/native_american_assessment/home.html.

In response to your second question regarding ONAP staffing of the Honolulu Field Office, there is one Native Hawaiian Program Specialist position. ONAP has no current plans to relocate or move this position. ONAP is committed to serving native Hawaiians through this position and has, and will continue to, communicate this commitment to Secretary Shaun Donovan.

Thank you for your interest in the Department's programs. If I can be of further assistance, please let me know.

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